SUPREME COURT OF THE UNITED STATES.

No. 36.

AMOS KENDALL, POSTMASTER GENERAL OF THE UNITED STATES, PLAINTIFF IN ERROR,

vs.

THE UNITED STATES ON THE RELATION OF WILLIAM B. STOKES ET AL.

IN ERROR TO THE CIRCUIT COURT U. S. FOR WASHINGTON COUNTY, D. C.

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Langtree & O'Sullivan, Print.

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Writ of error.

UNITED STATES OF AMERICA:

The President of the United States to the judges of the circuit court of the United States for the District of Columbia, sitting for the county of Washington, greeting:

Because, in the records and proceedings, as also in the rendition of the judgment of a plea, which is in the said court, before you or some of you, wherein the United States, at the relation of William B. Stokes, Richard C. Stockton, Lucius W. Stockton, and Daniel Moore, were plaintiffs, and Amos Kendall, Postmaster General of the United States, was defendant, a manifest error hath happened to the great damage of the said Amos Kendall, Postmaster General, as by his complaint appears, we being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that under your seal, distinctly and openly, you send the records and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same on the Monday of January next in said Supreme Court, to be then and there held; and that the record and proceedings aforesaid, being inspected, the said Supreme Court may cause further to be done therein to correct that error, which of right, and according to the laws and custom of the United States, should be done.

Witness, the honorable Roger B. Taney, Chief Justice of said Supreme Court.

Issued this 30th day of October, 1837.

W. BRENT,
Cl'k Cir't C't Dis't Col'a, county of Wash'ton.

Citation.

DISTRICT OF COLUMBIA, *sct:*

The United States of America to William B. Stokes, Richard C. Stockton, Lucius W. Stockton, and Daniel Moore, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States on the Monday of January next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the District of Columbia, in the county of Washington, wherein Amos Kendall, Postmaster General of the United States, is plaintiff in error, and the United States, at the relation of you, are defendants in error, to show cause, if any there be,

why judgment rendered against the said Amos Kendall, Postmaster General, in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in this behalf.

Witness, the honorable William Cranch, chief judge of the circuit court of the District of Columbia, this 30th day of October, 1837.

W. CRANCH.

Served the above on Richard S. Coxe, esq., the attorney of Stokes, Stocktons, and Moore, by leaving with him a certified copy.

ALEXANDER HUNTER,
Marshal.

Copy.—Appeal bond.

Know all men by these presents, that we, Amos Kendall, Postmaster General of the United States, Amos Kendall, S. R. Hobbie, and Francis P. Blair, are held and firmly bound unto the United States of America, for the use of William B. Stokes, Richard C. Stockton, Lucius W. Stockton, and Daniel Moore, in the full and just sum of three hundred and seventy-five dollars, lawful money of the United States, to be paid to the said United States for the use of the said William B. Stokes, Richard C. Stockton, Lucius W. Stockton, and Daniel Moore, the survivors or survivor of them, their or his certain attorney or assigns, or the executor or administrator of such survivor, to which payment well and truly to be made and done, we bind ourselves, and each of us, our and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents, sealed with our seals, and dated this thirtieth day of October, in the year one thousand eight hundred and thirty-seven.

Whereas, lately, at a circuit court of the District of Columbia, sitting for the county of Washington, in a suit pending in the said court, the United States, at the relation of William B. Stokes, Richard C. Stockton, Lucius W. Stockton, and Daniel Moore, are plaintiffs, and Amos Kendall, Postmaster General of the United States, is defendant, the said circuit court did adjudge and direct that the United States writ of mandamus should issue, directed to the said Amos Kendall, Postmaster General, as aforesaid, commanding and directing him, &c., &c.; and the said Amos Kendall, Postmaster General, as aforesaid, having obtained a writ of error and filed a copy thereof in the clerk's office of the said circuit court, to reverse the judgment in the aforesaid suit, and a citation directed to the said William B. Stokes, Richard C. Stockton, Lucius W. Stockton, and Daniel Moore, citing and admonishing them to be and appear at a Supreme Court of the United States, to be holden at Washington on the second Monday of January next.

Now, the condition of the foregoing obligation is such, that if the above named Amos Kendall, Postmaster General of the United States, shall prosecute the said writ of error to effect, and answer all damages and costs if he shall fail to make his plea good, then the above obli-

gation to be void, otherwise to be and remain in full force and virtue.

AMOS KENDALL. [SEAL.]
S. R. HOBBIE. [SEAL.]
F. P. BLAIR. [SEAL.]

Signed, sealed, and delivered in the presence of
JOHN MARRON.

Approved: W. CRANCH.
Copy: Test. W. BRENT, *Cl'k.*

Style of Court.

DISTRICT OF COLUMBIA, *sct.*

At a circuit court of the District of Columbia, begun and held in and for the county of Washington, at the city of Washington, on the fourth Monday of March, being the twenty-seventh day of the same month, in the year of our Lord one thousand eight hundred and thirty-seven, and of the independence of the United States the 61st.

Present: The hon. William Cranch, chief judge; Buckner Thruston, James L. Morsell, assistant judges; Alexander Hunter, esq., marshal.

WILLIAM BRENT, *Clerk.*

Parties.

In the records of the proceedings of the said court, among others are the following, to wit:

The United States on the relation of W. B. Stokes, R. C. Stockton, Lucius W. Stockton, and Daniel Moore,
against
Amos Kendall, Postmaster General of the United States.

Be it remembered, that the said relators, by Richard S. Coxe, esq., their attorney, filed in court here, on the twenty-sixth day of May, in the year of our Lord one thousand eight hundred and thirty-seven, the following petition and exhibits, to wit:

Petition.

To the honorable the Judges of the Circuit Court of the District of Columbia for the county of Washington.

The petition of William B. Stokes, Richard C. Stockton, Lucius W. Stockton, and Daniel Moore, respectfully showeth:

That your memorialists, under contracts made with them and the Postmaster General of the United States, the late William T. Barry, were entitled to certain credits and allowances on their several contracts for the transportation of the mail of the United States; that the said William T. Barry was, as such, Postmaster General by the laws of the United States, duly authorized to make such contracts and arrangements with your petitioners as such contractors, and that said contracts were duly and legally made; that certain credits and allowances were duly made and given to your petitioners upon the said contracts, and certain amounts of money actually paid on such accounts; that, some time in the year 1835, the said William T. Barry

why judgment rendered against the said Amos Kendall, Postmaster General, in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in this behalf.

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ALEXANDER HUNTER,
Marshal.

Copy.—Appeal bond.

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gation to be void, otherwise to be and remain in full force and virtue.

AMOS KENDALL. [SEAL.]
S. R. HOBBIE. [SEAL.]
F. P. BLAIR. [SEAL.]

Signed, sealed, and delivered in the presence of
JOHN MARRON.

Approved: W. CRANCH.
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Style of Court.

DISTRICT OF COLUMBIA, *sct.*

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Present: The hon. William Cranch, chief judge; Buckner Thruston, James L. Morsell, assistant judges; Alexander Hunter, esq., marshal.

WILLIAM BRENT, *Clerk.*

Parties.

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Petition.

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The petition of William B. Stokes, Richard C. Stockton, Lucius W. Stockton, and Daniel Moore, respectfully showeth:

That your memorialists, under contracts made with them and the Postmaster General of the United States, the late William T. Barry, were entitled to certain credits and allowances on their several contracts for the transportation of the mail of the United States; that the said William T. Barry was, as such, Postmaster General by the laws of the United States, duly authorized to make such contracts and arrangements with your petitioners as such contractors, and that said contracts were duly and legally made; that certain credits and allowances were duly made and given to your petitioners upon the said contracts, and certain amounts of money actually paid on such accounts; that, some time in the year 1835, the said William T. Barry

resigned his said situation of Postmaster General, and Amos Kendall was appointed to the said office, who entered upon and undertook to perform the duties of said office; that sometime after the said Amos Kendall had thus entered upon the said office, he undertook to re-examine the said contracts thus entered into by his predecessor, the allowances by him made, the credits given and the payments under the same, and did order and direct that the said allowances and credits should be withdrawn, and your petitioners recharged with divers payments which they had received.

And your petitioners further show unto your honors, that they were dissatisfied with said proceedings of the said Amos Kendall, as Postmaster General as aforesaid; and believing that he was exceeding his official authority in said proceedings, as also that he was mistaken as to the legal rights of your petitioners, as well as to the extent of his own powers and authority, and being unable to make a satisfactory adjustment of said matters of difference with him, your petitioners did address a memorial to the Congress of the United States, as by reference to the same on file in the Senate of the United States, and a copy thereof hereunto annexed, and marked A, will appear, (copied in page 13.)

And your petitioners further show unto your honors, that the said Congress of the United States did so proceed upon the said memorial and the evidence adduced to support the same, that they passed an act which was approved by the President of the United States on the second day of July, 1836; that, in and by said act, it was, among other things, provided, that the Solicitor of the Treasury was authorized and directed to settle and adjust the claims of your petitioners for extra services performed by them, as contractors for carrying the mail, under and by virtue of certain contracts therefor, by them alledged to have been made and entered into with them by William T. Barry, late Postmaster General of the United States, and for this purpose to inquire into and determine the equity of the claims of them, or any of them, for, or on account of, any contract, or additional contract, with the said Postmaster General, on which their pay may have been suspended by the present Postmasters General, and to make them such allowances therefor, as, upon full examination of all the evidence, may seem right, according to the principles of equity; and that the Postmaster General be, and he is hereby, directed to credit such mail contractors with whatever sum, or sums of money, if any, the said solicitor shall so decide to be due to them for, and on account of, any such service or contract; and the solicitor is hereby authorized to take testimony, if he shall judge it to be necessary to do so; and that he report to Congress, at its next session, the law and the facts upon which his decision has been founded, as in and by the said act of Congress, reference being thereunto had, will more at large appear. Mark B (copied in page 19.)

And your petitioners further shews unto your honors that, after the passage of the said act of Congress, Virgil Maxcy being the Solicitor of the Treasury, assumed upon himself the performance of the duty and authority created and conferred upon him by the same; and

did, in pursuance and execution of the said act, proceed to examine, settle, and adjust the claims of the said parties, as he was therein and thereby authorized and directed; that, on the 12th November, 1836, he did make out and transmit to the said Amos Kendall, Postmaster General, in part, his award and decision upon certain items of said claims, so referred to him; and on the 23d November, 1836, did make out and communicate to the said Postmaster General, his decision and award upon the residue of said claims of your petitioners, as will more fully and at large appear by reference to the said documents in the possession of said Postmarter General, or to copies thereof, hereunto annexed and made part of this petition, marked C and D, (copied in pages 21 and 25.

And your petitioners further shew, that, in further execution of said act of Congress, said Virgil Maxcy, Solicitor of the Treasury, as aforesaid, did, on or about the 26th day of November, 1836, make out and report to the Congress of the United States, the law and the facts upon which his decision had been founded, as by reference to the original, on file in the Senate, or a copy thereof, hereunto annexed, and marked E, will appear, (copied in page 33.)

And your petitioners shew unto your honors, and insist that, under and by virtue of said award and decision of the said solicitor, so communicated and reported as aforesaid, and of the said act of Congress, your petitioners became and were entitled to have the sum of $162,727 05 carried to their credit, or, at least, after allowing for some deductions therefrom, made by said solicitor, by and with the assent of your petitioners, or some of them, the sum of $161,563 89, as the amount of principal and interest due to your petitioners by the terms of said award and decision. But the said Postmaster General, although fully notified of the premises, and after a considerable delay, only so far obeyed and carried into execution the said act of Congress and said award, as to direct and cause to be carried to the credit of your petitioners, the sum of $122,101 46, which said last mentioned sum of money has been accordingly paid or credited to your petitioners; and he has from that time and does still refuse, omit, and neglect, notwithstanding the provisions of said act of Congress, and the said award and decision of said Solicitor of the Treasury, so made, communicated, and reported, as aforesaid, to pay, or credit to your petitioners the residue of the said sum so awarded, being the sum of $39,462 43, or to credit or pay to your petitioners, or either of them, the interest upon the said balance so unjustly and illegally withheld.

And your petitioners further shew unto your honors, that after the said Amos Kendall had, as aforesaid, refused, omitted, and neglected to execute his duty by obeying the said act of Congress, in passing the amount so awarded, as aforesaid, to their credit, your petitioners, or some of them, acting in behalf of all, addressed a communication to the President of the United States, requesting him to cause said act of Congress to be executed; and the said President did transmit to the said Amos Kendall, Postmaster General, as aforesaid, the said letter, and receiving from him a reply, setting forth the grounds upon

which he had thus refused, neglected, and omitted, and suggesting the propriety of your application to Congress for further legislation upon the suject; the same was transmitted by the said President as an answer to said letter so written in behalf of your petitioners, as by reference to the same, herewith exhibited and marked F, will appear, (copied in page 69.)

And your petitioners further show that, in consequence of said correspondence, they caused to be presented to Congress a memorial, the original of which is on file in the said Senate, as aforesaid, and a copy of which is hereunto annexed and marked G, (copied in page 72,) which said memorial was laid before the Senate, and by that body referred to its committee on the judiciary; and the said committee did examine into the said memorial and the subject-matter thereof, and also sundry papers connected therewith, particularly certain papers from the said Postmaster General, and from the Solicitor of the Treasury, setting forth their views and the reasons by which they were respectively governed, as by reference to the same, and the papers therein respectively referred to on file with the said Senate, or to copies thereof hereunto annexed and marked H I K, (copied in pages 74, 127, 235,) will appear. And the said Committee on the Judiciary did make report to the Senate, as will appear by reference to copies of their reports, hereto annexed and marked L M, (copied in pages 259 and 266,) and to correspondence between said Postmaster General and the chairman of said committee, hereunto annexed, marked M, a, (copied in page 267.)

And your petitioners further shew and represent, that the principal, if not the only, ground upon which the said Amos Kendall, the said Postmaster General, as aforesaid, did refuse, neglect, and omit fully to execute and obey said act of Congress, and to carry the same into effect by carrying to the credit of, or causing to be credited to, your petitioners the full amount of said award and decision, so made by the said Solicitor of the Treasury, was, as represented by him, that the said Solicitor had transcended the authority created and conferred on him by the said act of Congress, in so awarding and deciding; whereas, as your petitioners are advised and believe, the said solicitor did in no manner exceed or transcend his duty or authority, but, on the contrary, being apprised that a doubt might exist as to the true construction of said act of Congress, and as to the extent of his duty and authority under it, he did, before making his said award and decision, submit the said question to the Attorney General of the United States and obtain his opinion thereupon, as by reference to the papers hereunto annexed, and marked N and O, will appear, or copies thereof in exhibit J, (copied in page ——.)

And your petitioners conceiving and believing that they are and have been entitled to the whole sum so awarded by the said solicitor, passed to their credit on the books of the Post Office Department, and to receive the amount which, after the said entry, should appear justly due to them, with legal interest upon the balance, have applied to the said Amos Kendal, Postmaster General, as aforesaid, to have the said credits so entered, and the said moneys so paid, which he

has continually refused, and still refuses and neglects to do; and the Congress of the United States will not pass any other or further law, as it is believed, merely because they have already passed one sufficient to meet the case, so that the only means of obtaining the money which is justly due to your petitioners, is, by application to your honorable court.

Wherefore, your petitioners do respectfully pray that your honors, the premises considered, will award the United States writ of *mandamus* to be directed to the said Amos Kendall, Postmaster Geneneral of the United States, commanding him,—

1. That he shall fully comply with, obey, and execute, the aforesaid act of Congress, of July 2, 1836, by crediting your petitioners with the full and entire sum so awarded, as aforesaid, in their favor, by the Solicitor of the Treasury, as aforesaid, in conformity with said award and decision.

2. That he shall pay to your petitioners the full amount so awarded, with interest thereon deducting only the amount which shall be justly charged or chargeable to your memorialists against the same.

MARYLAND, BALTIMORE CITY, *ss:*

Lucius W. Stockton, one of the aforesaid petitioners, being duly sworn, according to law, deposes and says: that he is one of the parties petitioner in the aforesaid petition named, and that the said petition does faithfully and truly detail the facts as therein stated, and that all the matters stated in said petition are true, to the best of his knowledge and belief.

L. W. STOCKTON.

Sworn to and subscribed, this 20th day of May, 1837, before me,

R. B. TANEY,

Chief Justice Supreme Court United States.

Exhibit A—Memorial of Stockton, &c. to Congress.

Exhibit A, referred to in plaintiff's petition, p. 6.

To the Honorable the Senate and House of Representatives of the United States.

The memorial of William B. Stokes, Richard C. Stockton, of Maryland, and Lucius W. Stockton and Daniel Moore, of Pennsylvania, respectfully sheweth:

That they became contractors with the Post Office Department in 1831, and, among other services, engaged to carry the United States mail from Baltimore and Washington to Wheeling, on the terms and in the manner stated in their contract. By their engagement, a considerable increase of speed was stipulated for, if desired by the department, and was required and performed, and further compensation allowed for it. The contract, thus improved, went into operation on the 1st of January, 1832.

The ordinary mails between those cities, at the time of making these engagements, and for some time before, did not exceed the weight of one hundred pounds; but the increased speed thus required, and given on this route, drew upon it the mails (or a very large proportion of them,) that had before gone more directly, but less expeditiously, from Philadelphia and New York, as the letters and papers from those cities reached their destinations in the west a day earlier, by the way of Baltimore. This circumstance, and probably some change in the Post Office laws, together with an intimation from the Department to the post office in Philadelphia or New York, soon produced an increase in the weight of the mails on this route, stated by an officer of the Department, to appear from certificates on file, to be "more than a ten-fold ration."

Your memorialists finding themselves thus unexpectedly incumbered with a weight of mails, which their preparations to fulfil their contract were entirely inadequate to bear, nevertheless went on to increase their force upon the route, and provided for the additional labor thus thrown upon them, supposing these services, thus rendered necessary by arrangements and events contemplated at the time of the contract, could not be considered obligatory under the contract, they applied early in the year 1833 to the Department, to be compensated for them. In that application, twenty-five per cent. was asked to be added to their mail pay, as then established, as the additional compensation for this extra service. Their correspondence with the Department, (herewith submitted,) will show that the agents of the Government had as little contemplated, as your memorialists, the circumstances under which this extraordinary weight of mails had been thrown upon them, and consequently entertained the same opinion expressed by your memorialists, of their right to be compensated for the services they were thus performing. The services were required of them on a clear promise of compensation, the amount to be afterwards ascertained.

Your memorialists further beg leave to state, that the offer thus made in their behalf to perform this duty, per 25 per cent. advance on their regular pay, was made by one of your memorialists without conferring with his associates, who were better informed than himself of the extent of labor and expense occasioned by the increase of the mails; and that soon afterwards, and upon more accurate statements and calculations, it was found that the increase of the mails averaged a much greater amount than he had supposed, being at least twenty times as great as at the commencement of the contract, and required a much greater expense for its transportation than he had estimated.

These views were afterwards fairly submitted to the head of the Department, and fully considered; and the accompanying documents and papers will show that an allowance of fifty per cent. on their pay, as regulated by the contract, was ordered as a compensation for their extra duty.

These documents will also show, as your memorialists conceive, that this allowance (though the order of the Postmaster General had

been for some time mislaid,) was, in February last, entered on the books of the Department, to their credit; and that long before it was so entered, and from the date of the order, the amount of this allowance was included in the estimates of their quarterly pay, and paid to them; and they refer to the statements of the late Postmaster General, and of the treasurer, Mr. O. B. Brown, accompanying this memorial, to show these facts.

These payments may not appear on the books of the Department (and your memorialists presume they do not,) to have been made on estimates, including the extra compensation thus ordered; but your memorialists were entitled in no other way to the sums they thus received, and had not asked for, or been allowed such advances; and had no reason to believe that an allowance thus ordered, and then entered to their credit, and thus paid to them, would be ever questioned.

They respectfully submit, that they had no reason to suppose that the Postmaster General had not the power he assumed, and which they were aware he and all his predecessors had exercised, in deciding what services were included in a contract made with the Department, and what were to be considered as extra or additional. They were also confident that the compensation they had asked for was just and reasonable, and they submit documents and proof herewith, to show it was so; and they presume it will abundantly appear, that the allowance thus ordered was made by the head of the Department, with a full view and fair consideration of all the circumstances attending the claim, and that your memorialists are properly entitled to all the benefit of it. Your memorialists further state, that their account being unsettled in the books of the Department, when the present Postmaster General came into office, he considered himself bound, in the adjustment of their accounts, to reject any credits for the allowances thus made to them for this extra duty. In his construction of the Post Office laws he also felt himself without legal authority to adjust the claims and make any compensation for these services; and further considering, that there had been no legal sanction for the allowances thus made to your memorialists, he felt bound, by his duty, to stop the regular contract pay of your memorialists, till the sums they had thus received from the Department (and which he considered as over payments,) were refunded to the Government.

Those views thus entertained by the Postmaster General of the Post Office laws, and of the powers and duties of that Department, were, at the request of your memorialists, submitted to the decision of the Attorney General of the United States. They refer to his opinion, accompanying this memorial, by which it appears that he concurs, in his view of these legal questions, with the Postmaster General, so that no other remedy is left to your memorialists in a case, as they conceive, of very peculiar hardship, except that which is intimated in a passage of the Attorney General's opinion, and expressed in reference to this and similar claims in the conclusion of the Postmaster General's report to your honorable body.

Your memorialists find themselves in the same situation of hardship

and difficulty, in relation to another contract, (in which, however, only two of them are concerned,) under which they had rendered services in transporting the mail from Washington to Philadelphia. These services were brought before the view of the Department, and the opinion of counsel was laid before the late Postmaster General, who, after full consideration, ordered the allowances claimed by your memorialists, which allowances were entered in the books of the Department to their credit and paid to them.

They refer to the papers and documents accompanying this memorial, which fully state and explain the nature of this claim. Their regular pay is also stopped by order of Department, on the same grounds, of the want of legal authority in the head of the Department to make the allowances.

Your memorialists, notwithstanding the great embarrassments attending the stoppage of the funds they relied on to enable them to conduct their very expensive operations, under heavy contracts with the Department, have, with great difficulty, and at great sacrifices, continued to fulfil their engagements, as they have always done, with fidelity.

And they repectfully request such proceeding in their behalf on the part of Congress as its wisdom and justice may direct.

Signed,

STOCKTON & STOKES,
For themselves and the petitioners.

Exhibit B, referred to in Plaintiff's petition, p. 7.

Exhibit B.

CHAP. 284.

An act for the relief of William B. Stokes, Richard C. Stockton, Lucius W. Stocton, and Daniel Moore.

Act of Congress for relief of petitioners, &c.

SEC. 1. *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That the Solicitor of the Treasury be, and he is hereby, authorized and directed to settle and adjust the claims of William B. Stokes, Richard C. Stockton, of Maryland, and Lucius W. Stockton, and Daniel Moore, of Pennsylvania, for extra services performed by them as contractors for carrying the mail under and by virtue of certain contracts therefor, by them alleged by them to have been made and entered into with them by William T. Barry, late Postmaster General of the United States, and for this purpose to inquire into, and determine the equity of the claims of them, or any of them, for or on account of any contract or additional contract with the said Postmaster General, on which their pay may have been suspended by the present Postmaster General, and to make them such allowances therefor as upon a full

examination of all the evidence, may seem right, according to the principles of equity; and that the said Postmaster General be, and he is hereby, directed to credit such mail contractors with whatever sum or sums of money, if any, the said solicitor shall so decide to be due to them for on account of any such service or contract; and the solicitor is hereby authorized to take testimony, if he shall judge it to be necessary to do so; and that he report to Congress at its next session, the law and the facts upon which his decision has been founded: *Provided*, the said solicitor is not authorized to make any allowance for any suspension, or withholding of money by the present Postmaster General, for allowances or overpayments made by his predecessor, on route number thirteen hundred and seventy-one, from Philadelphia to Baltimore, for carrying the mail in steamboats, when it was not so carried by said Stockton and Stokes, but by the steamboat company; nor for any suspension or withholding of money as aforesaid, for allowances or overpayments made as aforesaid, for carrying an express mail from Baltimore to York or Lancaster; nor for any suspension or withholding of money, as aforesaid, for allowances or overpayments, made as aforesaid, on route number thirteen hundred and ninety-one, from Westminster to McConnerston, as described in the improved bid; nor for any suspension or withholding of money, as aforesaid, for allowances or overpayments, as aforesaid, on the route from Baltimore to Wheeling, for running a certain daily line, Hagerstown and Wheeling, from the first of September eighteen hundred and thirty-two, to the first April eighteen hundred and thirty-three, when the line referred to only run triweekly; nor for any suspension or withholding of money, as aforesaid, for allowances or over payments, made as aforesaid, *for allowances or overpayments made as aforesaid*, on the route from Baltimore to Washington, under the contract of eighteen hundred and twenty-seven; but nothing in this proviso shall prejudice any application they may make, hereafter, in reference to these routes, if they shall think it proper to make such application.

Approved, July 2d, 1836.

I certify the above to be a true copy of the act of Congress, taken from the published acts of the first session of this twenty-fourth Congress of the United States.

A. MALBER.

Exhibit C, referred to in plaintiff's petition, p. 8.

Exhibit C.—Report of Solicitor.

OFFICE OF THE SOLICITOR OF THE TREASURY,
November 12, 1836.

SIR: In obedience to, and in pursuance of, the authority of an act of Congress, of the 2d July, 1836, entitled "An act for the relief of W. B. Stokes, Richard C. Stockton, Lucius W. Stockton, and Daniel Moore," by which the Solicitor of the Treasury is authorized and

directed to settle and adjust the claims of those gentlemen, for extra services performed by them, as contractors for carrying the mail, under and by virtue of certain contracts therefor, by them alleged to have been made and entered into with them by William T. Barry, late Postmaster General of the United States, and for this purpose to inquire into, and determine the equity of the claims, or of any of them, for, or on account of any contracts or additional contracts, with the said Postmaster General, on which their pay may have been suspended by the present Postmaster General, and to make such allowances therefor as upon a full examination of all the evidence may seem right, according to the principles of equity, I have had under consideration the claims of the said Richard C. Stockton, under the contract made on the 15th of October, 1831, between said Stockton and McNeill, of Columbus, Ohio, and the late Postmaster General, for the transportation of the mail on sundry routes, so far as relates to the carrying thereof, on routes 1201, 1389, and 1390, and this, the said Stockton's claims, under the contracts additional thereto, alleged to have been entered into with the late Postmaster General, on which his pay has been suspended by the Present Postmaster General.

Those claims as made by Mr. Stockton, are as follows, to wit:

1st. For increased speed on said three routes from the 1st of January, 1834, to the 31st December, 1835, according to the rate allowed at the Post Office Department, and paid for from the 1st of January, 1832, to the 31st of December, 1833, that is $1,687 50 per quarter, amounting to - - - - - $13,500

2dly. For extra horses and postillions on the route from Baltimore to Wheeling, from the 1st of January, 1834, to the 31st of December, 1835, according to the rate allowed, and paid for, during the two previous years, that is $2,453 per quarter, amounting to - 19,624

3dly. For increase weight of mails, 50 per centum of $38,508, the amount of all the payments and allowances together, for services on the route from Baltimore to Wheeling, from 1st of January, 1832, till 31st December, 1835, being four years at the rate of $19,254 per annum, or sixteen quarters, at $4,813 50 per quarter, amounting to - - - - - - 77,016

4thly. For interest upon such sums due from the Post Office Department, the payment of which has been suspended.

I have made a full examination of all the evidence touching the above mentioned claims, and considered as well that which has been communicated by the Post Office Department, and the Secretary of the Senate, as that received from the claimants, and collected by depositions, and obtained from published documents, and have decided that there are equitably due to said Richard C. Stockton, on account of said claims, the following sums of money, viz:

For part of the first mentioned claim for extra services, that is for five quarters, commencing with the 1st January, 1834, and ending on the 31st March, 1835, at the rate of $1,687 $\frac{50}{100}$ per quarter, the sum of - - $8,437 50

For part of the second claim above mentioned, that is for five quarters, commencing with the 1st of January, 1834, and ending on the 31st of March, 1835, at the rate of $2,453 per quarter, the sum of - - 12,265

For part of the third claim above mentioned, on account of increased weight of mails, that is 50 per centum on all payments and allowances for thirteen quarters, commencing with the 1st of January, 1832, and ending on the 31st of March, 1835, at the rate of $4,813 50 per quarter, the sum of - - - - 62,515 50

Making together up to the 1st of April, 1835, when the pay of said Stockton was suspended by the present Postmaster General, the total sum of - - 83,278

I have also decided, that there is equitably due to the said R. C. Stockton, on account of all the above claims for extra services for the 2d, 3d and 4th quarters of the year, 1835, the further sum (at the rate of $8,954 per quarter) of - - - - - 26,862

I therefore, in pursuance of the authority conferred on me, by the aforementioned act of Congress, make allowance to said Richard C. Stockton for his said claims up to the 1st of April, 1835, of the above sum of eighty-three thousand two hundred and seventy-eight.

I also by virtue of the same authority make allowance to said Stockton, for his said claims for extra services, from the 1st of April to 31st December, 1835, of the said sum of twenty-six thousand eight hundred and sixty-two dollars.

A claim for interest having been made, I have postponed the consideration of it, until the equity of the other claims of the gentlemen named in the title of the act, shall have been enquired into, and determined.

I have the honor &c.

(Signed)

VIRGIL MAXCY,
Solicitor of the Treasury.

To the Honorable, AMOS KENDALL,
Postmaster General U. States.

Exhibit D, referred to in Plff's petition, p. 8.

Exhibit D.—Letter of Solicitor to P. M. Gen'l.

OFFICE OF THE SOLICITOR OF THE TREASURY,
November, 23d, 1836.

SIR:—In obedience to, and in pursuance of the authority of "An act

of Congress of the 2d July, 1836, entitled an act, for the relief of William B. Stokes, Richard C. Stockton, Lucius W. Stockton and Daniel Moore," by which the Solicitor of the Treasury is authorized and directed to settle, "and adjust the claims of these gentlemen for extra services performed by them as contractors for carrying the mail, under and by virtue of certain contracts therefor, by them alleged to have been made and entered into with them by William T. Barry, late Postmaster General of the United States, and for this purpose to enquire into, and determine the equity of the claims or any of them, for, and on account of any contracts, or additional contracts, with the said Postmaster General, on which their pay may have been suspended by the present Postmaster General, and to make such allowances therefor as upon full examination of all the evidence may seem right according to the principles of equity," I have had under consideration the claims of Richard C. Stockton, under a contract of William T. Barry, late Postmaster General, with said Stockton, in pursuance of a proposition of the latter, bearing date the 11th March, 1833, for the transportation of a fast mail between Washington and Philadelphia, on which contract his pay has been suspended by the present Postmaster General. These claims are made by Mr. Stockton, are as follows, to wit:

1st. For an additional daily mail from Washington city via Baltimore to Philadelphia, by land conveyance, for 90 days during the winter of 1833–'4, requiring 30 teams of 4 horses, at $6 per day for each team, -	$16,200
2d. For like services, being for 100 days service during the winter of 1834–'5, 30 teams, $6 per team, making together the sum of - - -	$1,800
	$34,200 00

I have made a full examination of all the evidence, touching the above mentioned claims, and considered as well that which has been communicated by the Post Office Department, and obtained from public documents, as that received from the claimants, and have decided that there is equitably due to the said Richard C. Stockton on account of said claims, the sum of $34,200; and, therefore, in pursuance of the authority conferred on me by the aforementioned act of Congress, I do make allowance therefor to said Richard C. Stockton, the sum of thirty-four thousand two hundred dollars.

I have also had under consideration sundry other claims of the said Richard C. Stockton, as follows, to wit:

No. 1. For compensations for carrying the mail between Baltimore and Philadelphia for one month during the spring of 1831, after the steamboats, in which the mail, by contract, was to have been carried, began to run - - - - - -	$1,240

2. For compensation to mail guards for the above period in 1831 - - - - - -	$458 33
3. Also for one month in the spring of 1832, -	458 33
4. For furnishing arms and amunition for 1831–'2,	76 50
5. For amount paid for boat in Philadelphia, and for expenses at Havre de Grace, - - -	170 00
6. For going round by Port Deposit, when the river Susquehannah was impassible, - - -	294 00
7. For running second coach with double mails from Baltimore to Washington, when the mails were too heavy for one coach, 39 times during the winter of 1831, at $20 each, - - - - - -	780 00
8. For the same service, 36 times, during the quarter ending 30th June, 1832, at 20 per trip, - -	720 00
9. For the same service, 46 times, at $20 per trip, in the quarter ending Sept. 30th, 1832, - -	920 00
10. For same services, 41 times, at $20 per trip, in the quarter ending 31 Dec'r, 1832, - - -	820 00
11. For same 29 times, at $20 per trip, in the quarter ending 21st March, 1833, - - -	780 00
12. For same 49 times, at $20 per trip, in the quarter ending 30th June, 1833, - - - -	980 00
13. For same 54 times, at $20 per trip, in the quarter ending 30th Sep't, 1833, - - -	1,080 00
14. For same 35 times, at $20 per trip, in the quarter ending 21 Dec'r, 1833, - - - -	700 00
15. For same 5 times, at $20 per trip, in the quarter ending 21st March, 1834, - - - -	100 00
16. For the same 34 times, at $20 per trip, in the quarter ending 20 June, 1834, - - - -	680 00
17. For ditto, ending 20th Sept., 1834, - -	680 00
18. For same 39 times, at $20 per trip, for the quarter ending 21st Dec'r, 1835, - - - -	580 00
19. For same 14 times, at $20 per trip, in the quarter ending 31st March, 1835, - - - -	280 00
Making together a total sum of - -	$11,797 16

I have examined the evidence touching the abovementioned claims, as well that which has been communicated by the Post Office Department, and obtained from public documents, as that which has been laid before me by the claimant. The above claims I have decided to be equitable and just, with the exception of the one marked number six, amounting to $294, and do make allowance, therefore, to said Richard C. Stockton, of the sum of eleven thousand five hundred and three dollars and sixteen cents.

I informed you, in my letter of the 12th instant, that a claim had been made for interest.

The Post Office Department having decided that the additional contracts, under which Mr. Barry had made sundry allowances, were unauthorised by law, and as a consequence, that the payments of such allowances were overpayments, determined to withhold from the persons named in the act of 2d July last, the sums admitted to be due, than quarterly, after the 1st April, 1835, under their regular contracts in order to reimburse the sums thus overpaid.

Having, in pusuance of the authority conferred on me by said act, decided in favor of the equity of those allowances, it follows, as an incident to them, that interest is equitably due on the same withheld by the Department from the several periods at which they became payable.

I have, therefore, decided that interest is equitably due to Richard C. Stockton on the following sums, which appear from the account transmitted from your Department, purporting to be amount of payments to R. C. Stockton, on account of transporting the mail on certain routes therein named, from the 1st of April, 1835, to July 1st, 1836, after deducting therefrom the sum of $6,375 96, which was over paid by the Department, on the 1st April, 1835—that is to say:

1st. On the current pay, under said Stockton's contracts for the second quarter of 1835, amounting to	$24,149 21
After deducting therefrom the balance overpaid to him on the 1st April, 1835	6,375 96
Making	$17,773 25
From the 1st August, 1835, to the 12 Nov., 1836, being for one year 3 months and twelve days, amounting to	$1,367 96
2d. On same for 3d quarter of 1835, amounting to $23,594 72, from 1st Nov., 1835, to 12 Nov., 1836, being 1 year and 12 days,	1,462 22
3d. On same for the fourth quarter of 1835, amounting to $23,487 66, from 1st Feb. to 12 Nov., 1836, being for 9 months and 12 days,	1,103 27
4th. On same for 1st quarter of 1836, amounting to $18,458 72, from 1st May to 12 Nov., 1836, being six months and 12 days,	590 17
5th. On same for the 2d quarter of 1836, amounting to $18,458 72, from 1st August to 12 Nov., 1836, being for 3 months and 12 days,	313 29
Making the total amount of interest due to R. C. Stockton on current quarterly pay admitted by Department	$4,836 89

Having decided in favor of the equity of the allowances made by your predecessor, under contracts made by him with Richard C.

Stockton, for transportation of the mail, on the routes from Washington and Baltimore to Wheeling, I think it right, according to the principles of equity, to allow him interest upon the sums so decided to be due, from the several quarterly periods when they became respectively payable, that is to say:

1st. On the same of $8,954, that became payable for the 2d quarter of 1835, on the 1st of August of that year, from that time to the 12 Nov., 1836, being one year 2 months and 12 days - - - -	$689 21
2d. On the same amount that became payable for the 3d quarter of 1835, on the 1st Nov. of that year, from that time to the 12 Nov., 1836, being for one year 12 days - - - - - - - -	554 90
3d. On the same amount that became payable for the 4th quarter of 1835, on the 1st Feb., 1836, from that time to 12 Nov., 1836, being for nine months and twelve days - - - - - - - -	420 59
Amounting to the aggregate sum of - -	$1,664 70

A claim for interest on his current pay, suspended by the Department, has also been presented by Lucius W. Stockton as follows:

1st. On $3,481 62, the amount due him on contracts with William T. Barry, upon the 1st April, 1835, from the 1st May, 1835, to 20 Oct., 1836, when principal was paid, being one year five months and twenty days - - - - - -	$307 38
2d. On $496 87, being current pay for 2d quarter of 1835, which became due on the 1st August, 1835, from the 1st August, 1835, to 20 Oct., 1836, being 1 year 2 months and 20 days - - - - -	36 41
3d. On $478, being current pay for 3d quarter of 1835, which became due on the 1st Nov., 1835, from the 1st Nov., 1835, to 20 Oct., 1836, being 11 months and 20 days - - - - - -	27 86
4th. On $478, being current pay for 4th quarter of 1835, which became due February 1st, 1836, from that day to 20th October, 1836, being eight months and 20 days - - - - - -	20 69
Making a total amount of interest due Lucius W. Stockton of - - - - - -	$392 34

I have examined the evidence touching the above mentioned claims of interest, and have decided that they are equitable and just, and do therefore make allowance therefor to the said Richard C. Stockton of

the sum of four thousand eight hundred and thirty-six dollars and eighty-nine cents, upon current pay withheld; and the sum of one thousand six hundred and sixty-four dollars and seventy cents, upon the pay withheld upon the claims for allowance for extra services on the routes between Washington and Baltimore from the 1st of April, 1835, to the 31st December, 1835.

I have also examined the evidence touching the claims of said Lucius W. Stockton, for interest, and have decided that it is equitable and just, and do therefore make him an allowance therefor, of three hundred and ninety-two dollars and thirty-four cents.

I have the honor to be, &c.,

(Signed) V. MAXCY,
Solicitor of the Treasury.

To the Hon'ble A. KENDALL,
Postmaster General, U. States.

Exhibit E, referred to in plff's petition, p. 8.

OFFICE OF THE SOLICITOR OF THE TREASURY,
Dec. 26, 1836.

Exhibit E—Report of Sol'r to Congress.

In obedience to the act entitled "An act for the relief of William B. Stokes, Richard C. Stockton, Lucius W. Stockton, and Daniel Moore," I have the honor to submit to Congress the following report:

By the act referred to, it is enacted that the Solicitor be, and he is hereby authorized and directed to settle and adjust the claims of William B. Stokes and Richard C. Stockton, of Maryland, and Lucius W. Stockton and Daniel Moore, of Pennsylvania, for *extra* services performed by them as contractors for carrying the mail under and by virtue of certain contracts therefor, by them alleged to have been made and entered into with them by William T. Barry, late Postmaster General of the United States; and, for this purpose, to enquire into, and determine the equity of the claims of them, or any of them, for, or on account of, any contract or additional contract, with the said Postmaster General, on which their pay may have been suspended by the present Postmaster General, and to make them such allowances therefor, as upon a full examination of all the evidence, may seem right, according to the principles of equity; and that the Postmaster be, and he is hereby directed, to credit such mail contractors with whatever sum or sums of money, if any, the said Solicitor shall so decide to be due to them, for, or on account of, any such service or contract; and the said Solicitor is hereby authorized to take testimony, if he shall judge it necessary to do so, and that he report to Congress the law and the facts upon which his decision has been founded.

The terms of this act are very broad, and allow a very large and liberal discretion in the exercise of the powers conferred on me. This circumstance, while it imposes a painful responsibility on ac-

count of the great amount of the claims in question, relieves me, at the same time, from the necessity of entering at all upon the question whether the allowances made by the late Postmaster General to the gentlemen named in the act, were or were not in strict conformity to law. I am directed to enquire into, and determine the equity of, the claims presented to me, and to make such allowances therefor, as upon a full examination of all the evidence, may seem right, according to the principles of equity. In other words, I am to enquire, first, whether the services, for which compensation is claimed, were performed, and the United States had the benefit of them in pursuance of contracts with the late Postmaster General, or in compliance with orders made by him, which imply an obligation to make compensation; and, in the next place, whether the compensation claimed is reasonable and just. The act makes some specific exception of claims, and forbids me to make any allowances for them, and moreover imposes on my jurisdiction one general limitation, and requires that the claims presented shall be on account of contracts, "on which the pay of the contractors has been suspended by the present Postmaster General."

In making up my opinion as to the amount of compensation to be awarded, I have felt great respect for the decisions of the late Postmaster General, made, as they were, under fresh information as to all the circumstances existing when the allowances were made, but the act does not restrict me to the sums allowed by him, but only requires that the allowances, whether greater or less, should be such as "seem right," in my judgment, according to the principles of equity. Nor do I consider my action restricted by the terms of the act, to a review of his allowances. On the contrary, the terms of the act clearly impose upon me, the duty of deciding upon all claims presented by the persons named in it, for services under contracts with the late Postmaster General, whether those claims were specifically presented to him, or to the present Postmaster General, for allowances or not, provided, they were services rendered in pursuance of contracts with the former, on which contracts the pay of the contractors had been suspended by the latter.

With such views of the nature of the duty required, I proceeded to the execution of it soon after the termination of the last session of Congress, by requesting the Postmaster General, the Secretary of the Senate, and Clerk of the House of Representatives, and the claimants, to transmit to my office such documents and proofs as related to the claims upon which I was to decide. In compliance with these requests, the Postmaster General, the Secretary of the Senate, and the claimants, furnished me with a great variety of papers. In a few instances, I have felt it my duty to cause testimony, in addition to that derived from all these sources, to be taken.

The claims first presented, were made for extra services performed on the routes from Washington and Baltimore to Wheeling, being numbered 1211, 1389, and 1390. They were—

1st. For increased expedition, &c.

2d. For extra horses and postillions, &c.

3d. For increased weight of mails.

I shall consider these three clauses in the order in which they are stated—

By the proposals advertised, until the 26th Sept., 1831, for carrying the mail, daily, between Baltimore and Wheeling, from the 1st January, 1832, to the 31st December, 1835, in four horse post coaches, three days and three hours were allowed for going out, and three days and 1½ hours in returning.

By a contract, bearing date the 15th of October, 1831, Richard C. Stockton and William Neil bind themselves to carry the mail, according to the above proposal, for a sum, which is ascertained by an apportionment, between the routes in question and the other routes contracted for, to be $4,550.

They bound themselves, also, if required by the Postmaster General, to carry a daily mail in 2½ days, and to run also a tri-weekly line; to carry the way-mails for the additional compensation of $8,950.

But, in consequence of the solicitation of a number of members of Congress, they propose an increase of speed on sundry routes, by a letter of the 23d December, 1831, for the annual compensation of $15,988, of which, the portion for the routes from Baltimore and Washington to Wheeling, in which they were to carry the mail in two days in summer, and two and a half in winter, was per annum $6,750; or, $1,687 50 per quarter. The late Postmaster General accepted this offer, and ordered the service on the 1st of January, 1832.

This increased speed was accomplished in the time stipulated, until it was rendered impossible by the breaking up of the National road for repair by the Government, when the Postmaster General allowed from 6 to 12 additional hours, without intending to diminish the contractors pay, but merely to make an allowance, in respect of time, equivalent to the delay occasioned by the obstructions thus created by the Government itself. This is proved by the deposition of the Honorable Andrew Stewart, of Pennsylvania, and the Rev. O. B. Brown, then Superintendent of mail contracts.

The former, in his affidavit, says: "I furthermore certify, that great obstacles were interposed by the agents of the Government in taking up and repairing the Cumberland road, so much so as to render it utterly impossible to effect, with any force, the transportation of the mail over it, in stages, with the required speed—first, by taking up the old bed, and covering its surface with large loose rock and stone, and afterwards, when repaired, in placing logs, stumps, brush and stones, on the alternate sides of the road, at short distances, ranging from forty to eighty feet apart, so as to force the carriages to run zig-zag across the road, to prevent the cutting of it into ruts and to pack the stone evenly. This rendered it impossible to drive rapidly without hazarding the lives of the passengers, and the security of the mail stages at all times, but especially after night. These difficulties were represented to the Department by myself and others, and an order was made in consequence, extending the time, allowed, I believe about twelve hours. This I considered at the time, and now consider, altogether inadequate to the unavoidable loss of time, occasioned by the obstructions placed in the way of the mail, by the

acts and agents of the Government, and compelled the contractors to increase the speed on other portions of the road where these obstructions did not exist, to make up the time lost, after the order giving the twelve hours addition. These facts came under my personal knowledge and observation in frequently passing over the road in the stages, and otherwise at the time."

Mr. Brown, in his deposition, No. 24, says:

"That in the contract of R. C. Stockton & Co., for transporting the mail between Baltimore, Washington city, and Wheeling, via Frederick, Cumberland, and on the National road, the contractors, for certain allowances of compensation, obligated themselves, for Jan. 1st, 1832, to run the mail through in two days in summer, and in 2½ days in winter, from Baltimore to Wheeling; or in four days from Baltimore to Cincinnati, in summer, and 4½ days in winter; that whilst they were performing the service at this rate, it was shown to the Post Office Department that the Government itself, through the War Department, had broken up a part of the road, for the purpose of making repairs on the same, by means of which it became impracticable, without immense loss and danger, to run in that time, and that the contractors, in essaying to keep the full speed, had broken and destroyed several coaches, and put in jeopardy the lives of the passengers and drivers; that the Postmaster General, in consideration of the obstruction having been occasioned by the Government itself, conceived it but equitable, on the part of the Department, to allow the contractors so much time beyond the two and the 2½ days, as to enable them to carry the mails through with the same labour and expenses that would have been required for performing the same service in the two and 2½ days, if the obstructions had not existed. With this view the time was extended. To what period I do not recollect; but several hours additional time were allowed; I believe from six to twelve hours. This additional time I know to have been allowed purely on account of the obstructions which the Solicitor had, and it was intended to be, no more than equivalent to the delays which such obstructions necessarily occasioned. The Postmaster General so expressed it to me at the time, and never intimated an intention or thought of diminishing the compensation of it."

The concurring testimony of both these gentlemen is confirmed by the schedules, which extend the time at various periods between the 22d of December, 1832, and the 31st of December, 1835, from six to thirteen hours beyond the two and two and a half days which were called the *increased speed* for winter and summer.

I have been more particular in quoting the testimony on this point at large, because the time of the increased speed being thus prolonged, it has been confounded with the "*improved speed*," proposed in the original bid, and inserted in the contract, which was two and a half days for the transportation of the mail between Baltimore and Wheeling; and it has in consequence, it is presumed, been alleged that the "increased speed" was not continued after the year 1833, because, after that year, no speed greater than two and a half days

between Baltimore and Wheeling was required by the schedules, which was the "improved speed," proposed in the original contract. But it has appeared to me that the same equitable considerations which induced the late Postmaster General to add 12 hours to the time of "increased speed," would, if the proposition of December, 1831, had never been made, have induced him to allow 12 additional hours for the "improved speed," making it three days instead of two and a half. I have, therefore, considered the time of two days and six hours, and two and a half days, in which the mail was carried at different periods after the road was broken up between Baltimore and Wheeling, as increased speed, within the equity of the stipulation of December 23, 1830.

It has been alleged also, that the allowance for "increased speed" was retrenched, and the service not required or performed after the first of December, 1833. For proof of this, reference has been made to an order of retrenchment entered in red ink on the margin of the contract; and to the fact that there is no written evidence in the Post Office Department of the restoration of this allowance, after that day. The depositions also of Mr. Hobbie, Assistant Postmaster General, and Mr. Suter, pay clerk, marked exhibits Nos. 5 and 6, were taken, to show that the late Postmaster General never intended to restore the allowance for "*increased speed*," and "extra horses and postillions."

In opposition to this negative testimony respecting the restoration of the allowance in question, after the retrenchment of them in December, 1833, there were laid before me depositions of witnesses of high and unimpeached character, which prove affirmatively, in the most positive and direct manner, that the allowances retrenched were restored; that at the earnest solicitation of one of them, the services, though the allowance was retrenched, were unintermitted, relying upon the necessity of their being soon made apparent; that the strongest representations of their indispensable necessity were soon after made by them, and numerous Members of Congress; that Mr. Barry was entirely convinced of their necessity; expressed his gratification on hearing that the services had been continued by the contractots; and after several interviews and consultations with his friends, restored all the extra allowances that had been retrenched; that *the fact of their restoration had, by the authority of the Postmaster General, been communicated to the contractors;* and when, afterwards, the order of restoration was construed to extend to part of the allowances and services only, the Postmaster General himself, in a letter to the contractors, assured them "it was intended to direct them to continue the improvements already on the road to Wheeling as indispensible." Admitting, therefore, that the late Postmaster General, as testified by Mr. Hobbie and Mr. Suter, said, in a moment of forgetfulness, more than a year afterwards, that he did not intend to restore the allowances for increased expedition and extra horses, and postillions, after they were retrenched in 1833, yet, inasmuch as a contrary declaration to Major Carneal and Mr. Stewart, was, by his authority, communicated by them to the contractors soon

after the retrenchment, in consequence of which they continued the increased expedition, and the extra horses and postillions, the contractors have clearly an equitable title to remuneration for those services, the United States having received the benefit of them. (See the depositions of Major Thos. D. Carneal, and the honorable Andrew Stewart, of Pennsylvania, in marked exhibits Nos. 3, 7, 8, and 9.)

The testimony is equally explicit and positive, and the witnesses much more numerous, many of them postmasters and tavern keepers on the road, that no order of discontinuance of the "increased speed" having been given by the present Postmaster General, it was actually continued to the 31st of December, 1835. (See exhibits Nos, 10, 11, 12, 13, 14, 15, 16, and 17, the last being the solicitor's letter to the Postmaster General, inquiring whether any notification was given to the contractors, that these services might be continued after the 1st of April; and No. 18, the Postmaster General's reply, that not considering the services for which the allowances of the Postmaster General were suspended in the account of Messrs. Stockton and Stokes, or R. C. Stockton, on the routes from Baltimore and Washington to Wheeling, as ever legally authorized, the Department has given no notification to these gentlemen to discontinue those services, other than declining to pay for them, on the grounds stated in the papers" before the solicitor.)

The contractors allege, that after the decision of the Postmaster General, not to pay on the ground of want of legal authority, they did not present any subsequent claim for the like services afterwards; but receiving no order to discontinue them, they continued to perform them, relying upon the justice of Congress to supply the defect in the authority by which the contracts were made with them.

The testimony above cited is so strong as to force the conviction on my mind, that the services in question were continued, though the Department, as stated in the last cited letter, was not aware of any evidence of the fact—the contractors furnishing none—as they presented no claim for them until the expiration of the contract, on the 31st December, 1835—I was constrained, therefore, to decide that the compensation should extend, without intermission, to that time; and being satisfied of its reasonableness, by the depositions of Moore and Falls, John C. Hall, and R. L. Barry, marked exhibits Nos. 19, 20, and 21, made allowance at the same rate as had been made by Mr. Barry, that is $1,687 50 per quarter, from the 14th January, 1834, to the 31st December, 1835, amounting in all to $13,500.

The second claim was for an allowance made by the late Postmaster General for extra horses and postillions.

Immediately after the commencement of the contract it was found necessary, in consequence of the breaking up of the National road, to employ six horses in each coach in going over the principal mountains. The whole number of extra horses thus rendered necessary was 44. Postillions to the number of twenty-two also became necessary. As this additional expense could not have been contemplated,

when the contract was made, the late Postmaster General thought it right, on application of the contractors, to be paid for this service, to make an allowance therefor, $2,453 per quarter. This will appear from the memorandum in red ink on the margin of the contract, marked exhibit No. 1, and also from exhibit No. 22, and the reasonableness of the allowance may be judged of by reference to estimates marked exhibits No. 19, 22, 23.

This allowance was retrenched in the autumn of 1833, but was again restored in the latter part of January, 1834, at the same time with the allowance for increased expedition, the Postmaster General having been convinced of the necessity of the extra horses and postillions. (See exhibits Nos. 3, 7, 8, and 9.)

The service also of these extra horses and postillions was continued to the 31st December, 1835, no order of discontinuance having been made by the present Postmaster General. (See exhibits in support of the claim for increased speed, marked exhibits Nos. 10, 11, 12, 13, 14, 15, 16, 17, and 18.)

The credit for the pay for extra horses and postillions was suspended from the 1st January, 1834, and the proof being full to the *restoration* of the allowance after the retrenchment in the latter part of 1833, and the continuance of the service to the 31st of December, 1835, I had decided, being satisfied that the allowance by the late Postmaster General was reasonable, to conform to it, and to allow for this claim, at the rate of $2,453 per quarter, amounting in the whole to the sum of $19,624.

The third claim, presented by the contractors, is for an additional allowance of fifty per cent. on their pay, on account of increased weight of mails, from January 1st, 1832, to 31st December, 1835, a period of four years. Their pay was at the time $38,508 per annum, fifty per cent. of which is $19,254 per annum, or $4,813 50 per quarter—the whole claim amounting to $77,016.

It appears to be fully proved, that in consequence of the *increased* expedition with which the mail was carried on the route from Baltimore to Wheeling, the heavy mails for the west, from the north to the east, beyond Philadelphia, which had, before 1832, been carried on the route from Philadelphia and Pittsburg, were drawn upon the route from Baltimore to Wheeling; that at the period when the contract was made, the mail from Baltimore and Washington to Wheeling averaged in weight about one hundred pounds. The fair interpretation of the contract, being the meaning entertained at the time of making it by both the contracting parties is, that the contractors were to carry a mail, such as it was at the time of entering into the contract with such addition thereto, as should arise out of the natural growth of the business of the country. But, in the case under consideration, there was a sudden increase from one hundred to two thousand pounds, which could not be accounted for from gradual and natural augmentation, but was attributable only to the cause above mentioned. Such an increase could not have been anticipated; and was not, therefore, in the contemplation of the parties, when the contract was made. Justice required, therefore, an additional allowance of

compensation for service in transmitting the mail which had thus increased in weight from ten to twenty fold.

The contractors propose to the Postmaster General, in the month of March, 1833, to make the requisite increase of their means of transportation, and apply for an additional allowance of 25 per cent. on their pay, to cover expenses. The Postmaster General directed that the services should be required, but suspended a decision on the compensation. Further experience taught the contractors, that 25 per cent. increase of compensation would not cover the increased expenditure, and, in the beginning of June, following, they asked, instead of 25 per cent., for an additional allowance of 50 per cent., which was granted by the late Postmaster General from the beginning of the contract, and the necessary instructions given to the Treasurer and pay clerk. Payment of all the extra allowances in question, for "increased expedition," extra horses and postillons, and "increased weight of mails," and well as the amount due under the orginal contract, continued to be made by the Post Office Department until the 1st of April, 1835.

This is proved by the account of the Department with Richard C. Stockton, marked exhibit No. 31, which embraces all his accounts, continuously, from the 1st October, 1829, to the 1st April, 1835, which would have left the department, after allowing all the amounts claimed by the contractors, in advance to them, [the] sum of $6,375 96.

The present Postmaster General, soon after he came into office, suspended from the credits of the account, the allowance for increased expedition, and extra horses, and postillons, from the 1st January, 1834, to the 1st April, 1835, and the whole of the allowance of 50 per cent. for increased weight of mails, from 1st of January, 1832, to the 1st of April, 1835, which made the contractors, at that date, debtors, for advances, under their several allowances, to the amount of $129,487 42. See the amount, exhibit No. 31.

Having ascertained the above to be the state of facts, I proceeded to examine, in pursuance of the directions of the act for the relief of the contractors, the testimony, which was laid before me, touching the reasonableness of the allowances made by the late Postmaster General. The testimony is contained in exhibits No. 19 and 21, herewith submitted. A letter addressed to me by one of the contractors, containing statements illustrative of the expense of the augmented service devolved on the contractors, calculated on the basis of charges to individuals for transportation, is also submitted. Exhibit No. 32.

Having given a mature consideration to all the circumstances of the case, and made an impartial examination of the evidence before me, I have arrived at a deliberate conviction that the allowances by the late Postmaster General were just—and large as, without examination, they appear to be, yet no more than just. I have, therefore, decided, that according to the principles of equity, the contractors are entitled, as their services were continued up to the 31st December, 1835, to receive the whole amount of their claim, from January 1st, 1832, to December 31st, 1835, being 4 years, at the rate of $19,254 per annum, amounting together to the sum of $77,016.

The fourth claim presented by the contractors, consisting of two items, was for transportation of an additional daily mail from the city of Washington via Baltimore, to Philadelphia, by land conveyance, for 90 days, during the winter of 1833,–'34, requiring 30 teams of 4 horses each, at $6 per day for each team, of $16,200, and for the same during the winter of 1834–'5, for 100 days, at the same rate, of $18,000.

It is known, as a part of the history of the times, that, in the winter of 1832–'3, the editors of sundry newspapers in New York united in the establishment of an express between Philadelphia and New York, which out-travelled the United States mail. This circumstance bringing reproach upon the Post Office Department, it was determined by it to employ Mr. Green, Postmaster of Boston, and Mr. Bates, assistant postmaster of New York, to arrange a plan, if practicable, for a fast mail between Washington and Portland, which they accordingly did, and Richard C. Stockton, by a proposal to the Post Office Department, bearing date the 11th March, 1833, and marked exhibit No. 34, engaged to carry it between Washington and Philadelphia in 20 hours. This proposal was accepted by the late Postmaster General, but for want of the necessary data for calculating the expense, ten thousand dollars were advanced towards it, and the amount of ultimate compensation was postponed for future consideration, when an experiment should furnish them.

At the time of making this proposal for carrying the fast mail, Mr. Stockton was carrying the mail at a different speed on the same route, under a contract with the department, bearing date the 15th October, 1831, and marked exhibit No. 36. There seems to be no dispute about the service, which is the object of the present enquiry, being performed, nor of its being performed well. But a question was raised whether, under the above mentioned contract, the contractors were bound to carry two daily mails between Baltimore and Philadelphia, in the winter season, or not. If they were, they would be entitled to compention, as it regards the fast mail, not for a new line, but for an improvement of speed only in one of their daily lines. If they were not bound to keep up two daily lines, this was an entirely separate and distinct service, not stipulated for in the contract of October 15, 1831, but only in the proposal of 11th March, 1833.

The testimony of Mr. Barry, in his statement marked exhibit No. 24, and of O. B. Brown, in his letter of the 10th January, 1835, to Messrs. Stockton and Stokes, marked exhibit No. 35, leaves no doubt that the distinct understanding between the department and the fast mail, in the winter of 1833–'4, and 1834–'5, between Washington and Philadelphia, was a separate and distinct service from that stipulated for in the contract of October 15, 1831, and, therefore, entitled to full compensation for the duty performed, and not a mere additional or extra compensation for an increase of speed on an established line. If any other document were necessary to sustain this position beyond all controversy, that document is supplied in the clear, able, and conclusive opinions and argument of Roger B. Taney, now Chief Justice of the United States, marked exhibit No. 37,

in which the late Postmaster General, in his statement above cited, says, that this opinion was in perfect coincidence wih his. He accordingly allowed for the service in the winter of 1833–'4, the sum of $11,740 for the route between Baltimore and Philadelphia, and $4,460, between Washington and Baltimore; making, together, the sum of $16,200, being at the rate of $6 per day for each of the 20 teams of 4 horses each, which the number the service required for 90 days, which was the length of service in that winter. He, also, allowed the same sum for the like services in the winter of 1834–'5.

The fact being established that the subject of the present enquiry was a service in pursuance of a contract with the late Postmaster General, and the fact of the pay under that contract being suspended by the present Postmaster General being apparent from the account rendered by the Post Office Department, marked exhibit No. 31, it remains to inquire what allowance for the service is right, according to the principles of equity.

It is proved by the depositions of Alexander M. Cumming, at the time general agent of the line of Messrs. Stockton & Stokes, between Baltimore and Philadelphia, and of Messrs. Malta & Scott, clerks in their office at Baltimore, marked exhibit No. 39 and 40, that 30 teams, of 4 horses each, were employed in the transportation of the *fast mail*, in question, between Washington and Philadelphia, and that the service continued in the winter of 1833–'4, for 90 days, and in 1834–'5, for 100 days.

It is proved by the depositions of Charles Goddard, N. B. Woodward, Hugh Cunningham, A. M. Cumming, and Alexander Scott, marked exhibit No. 41, 42, 43 and 44, that $6 per diem for each team, especially when is taken into consideration the great distinction of stock, from high speed, bad roads, and bad weather, is a reasonable rate of charge. Applying this rate of charge to the service rendered, for 90 days, in 1833–'4, and the amount will be $16,200, which Mr. Barry allowed.

It appears that the same sum was allowed for the service performed in the winter of 1834–'5 ; and, in directing the payment of it, he says, to Mr. Suter, the pay clerk, " allow the credit for sixteen thousand two hundred dollars, in conformity with the principles of the former decision, agreeably to the opinion of Mr. Taney." This shows that his intention was to allow the same rate for the service of 1833–'5, as he had done for that of 1833–'4, as the service in the year 1834–'5, continued 10 days longer than in 1833–'4. Justice requires, if $6 per day, for each team, be a reasonable allowance, which I think is abundantly established by the above depositions, that $1,800 should be added to the amount allowed for 1833–'4, making $18,000 ; which I have accordingly awarded. It is presumed that Mr. Barry had not the testimony as to the number of days before him, or, as he adopted the principle of the first decision, made a mistake through inadvertance.

The entire award, therefore, for this claim is $34,200.

The contractors next presented for allowance, a number of claims, contained in the following account, namely :

1831. *The Post Office Department, to Richard C. Stockton* Dr.

For compensation for carrying the mail between Baltimore and Philadelphia, for one month, during the spring of 1831, after the steamboats, in which the mail, by contract, was to have been carried, had began to run,	$1,240 00
For compensation for mail guards, for the above period, 1831, - - - - - - - - - -	458 33
1832. For ditto, for one month in the spring of 1832,	458 33
Furnishing arms and amunition, for 1832, - -	76 50
Expenses paid for boat in Philadelphia, and for expenses at Havre de Grace, - - - - - -	170 00
Going round by Port Deposite, when the River Susquehanna was impassible, - - - - - -	294 00
Running second coach, with double mails, from Baltimore to Washington, when the mails were too heavy for one coach, 39 times, during the winter of 1831, at $20 each, - - - - - - -	780 00
For same service, 36 times, and ending 30th June, 1832, at $20 per trip, - - - - - - -	720 00
For same, 46 times, ditto 2d, ending 30th September, 1832, - - - - - - - - - -	920 00
For same, 41, ditto, do 31st Dec'r, 1832, - -	820 00
Do 39 " " 31st March, 1832, - -	780 00
Do 49 " " 31st June, 1833, - -	980 00
Do 54 " " 31st Sept'r, 1833, - -	1,080 00
Do 35 " " 31st Dec'r, 1833, - -	700 00
Do 5 " " 31st March, 1834, - -	100 00
Do 34 " " 30th June, 1834, - -	680 00
Do 34 " " 30th Sept'r, 1834, - -	680 00
Do 39 " " 31st Dec'r, 1834, - -	780 00
Do 14 " " 31st March, 1835, - -	280 00
	$11,797 16

The first item of the above account is for carrying the mail between Baltimore and Philadelphia, for one month, during the spring of 1831, after the steamboats, in which the mails, by contract, was to have been carried, had begun to run, - - - - - $1,240

The late Postmaster General, in his statement marked exhibit No. 24, says, in reference to this allowance by him, that "by contract agreement they (the contractors) were entitled to a certain sum for carrying the great mail during the suspension of steamboat navigation, other provisions being made for its transportation during the time of steamboat navigation. After steamboat navigation commenced, the irregularity of the trips required the mail still to be carried by land for a time—in consequence of which the contractors were compelled to run their stages during such time, and without passengers, as the passengers were carried by the steamboats. It appeared, therefore, reasonable to make the allowances."

A similar allowance was made from the 1st of April to the 15th of May, 1832, of which the late Postmaster General, in his report under the act of 15th June, 1832, Senate Documents No. 422, page 204, says: "The contract of Stockton and Stokes for transporting the great daily mail between Baltimore and Philadelphia, in 1832, did not require them to carry it by land when the steamboats were running; but their departure from Baltimore was before the arrival of the great mail from the south, which rendered it necessary for them to keep up the great coach line during that period, for which they were allowed $1,860 additional." This last allowance is carried to the credit of Stockton and Stokes' account. See No. 3, in red-ink, exhibit No. 31. But this same account shows that no credit was given for the allowance of $1,240 above claimed. The exhibit No. 46, in the first item of the account, shows that it was allowed by Mr. Barry.

The Rev. O. B. Brown, see exhibit No. 47, testifies more at large to the same facts as the Postmaster General; and, amongst other things expressly to the fact of the contractors being required to perform the service; and the affidavits of Huston, Malter, and Scott, exhibits No. 48, prove the services.

The reasonableness of the charge is established as follows: By the contract for carrying the great mail between Baltimore and Philadelphia, during the winter months, the contractors were entitled to receive for the winter quarter $6,224, or per month $2,074 66⅔. For the summer, while the steamboats carried the great mail, per quarter, $2,504, or per month, $834 66⅔. The balance, after deducting a month's pay, according to the summer rule, is $1,240. The contractors being entitled to the pay for a month of winter service, and having been paid for a summer month's service, were entitled to receive the difference, that is, $1,240; and Mr. Barry accordingly directed them to be credited with it, and think it right. According to the principles of equity, I awarded it to be paid accordingly. See the contract, exhibit No. 36, and exhibit No. 31, item indicated by No. 4, in red-ink, to show that $6,224 was the part of the whole pay stipulated in the contract, apportioned to the route between Baltimore and Philadelphia per quarter, in winter, and $2,504 per quarter, in summer.

The next two items of claim are for mail guards in spring of 1831, during the month in which the steamboats were running irregularly, at the same rate as allowed by Mr. McLean, and also by Mr. Barry, - - - -	$458 33
Same in the spring of 1832, - - - -	458 33
For furnishing arms to mail guards in spring of 1831 -	76 50
To amount paid for boat, by order of the Department, voucher surrendered, - - - -	170 00
To going round by Port Deposite when the river was impassible at Havre de Grace, 21 times, at $14 per trip -	294 00

The two first of the above items were, I think, claimed by Messrs. Stockton and Stokes, and allowed by Mr. Barry, from an error in calculation, being satisfied that one of them was included in the sum of $1,240 above allowed, and the other in a credit given in Stockton's

general account of $1,860. The manner of ascertaining $1,240 to be the balance due on the service for carrying the mail in 1831, one month after the steamboats commenced their running, is by taking one-third of $6,224, the winter quarter's pay, which included the pay for guards—one-third is $2,074 66—and of course includes pay for guards during that month. After deducting from it one month's summer pay when no guards were used, which had been received, there was left a balance of $1,240, of which the charge for guards is a part. The credit for $1,860 above mentioned, in 1832, is ascertained by a calculation made on the same basis, and includes, of course, pay for guards. Both of these items, therefore, have been disallowed, as have also the three items following, for want of vouchers.

The principal items of this account consist of charges for running two coaches instead of one, to transport the whole of the great mail between Baltimore and Washington, it being too large to be carried in one coach. These items make up by far the greater part of the sums of $6,423 46, which is the last amount suspended in the general account with R. C. Stockton. See exhibit No. 31. Of these the late Postmaster General makes the following remarks: "The last case of suspension is that of allowance for double lines of stages from Baltimore to Washington, on special occasions, when the mails which arrived at Baltimore by steamboat for Washington, now too large and heavy to be brought on by one line of stages. There was nothing in this contract which required them to run double lines at any time. They were required, whenever it should be ordered, to carry three mails a day between the two cities, as they were, for the accommodation of passengers, running lines of stages at three different hours of the day; but to run two lines of stages, at the same hour, for the purpose of bringing the entire mail, was what they were not bound to do, and what could not be done without expense to them, which the contract did not compel them to incur. When it was found that the mail was sometimes too great to be carried in one line, (a circumstance which had never before occurred, and which was not contemplated when the contract was made,) the contractors proposed to leave a part of it until their next line in order should run. This they were prohibited from doing, but directed to bring the entire mail at once and without delay, whatever force it might require, or whatever number of lines it might employ. This order they obeyed, and on such occasions it appeared reasonable to make the allowance. Such allowance had been made and paid to them prior to the last decision; and the last decision was not for a new allowance, the principle being already settled, but it was rather an approval of the testimony upon which the performance of the service had been established." See exhibit No. 24.

In the statement preceding Mr. Glenn's argument, which is sworn to by the Reverend O. B. Brown, it is said, "that Messrs. Stockton and Stokes were contractors for carrying the mail from Baltimore to Washington city. It some times happened that the mail which arrived by steamboat at Baltimore from Philadelphia, was so large and heavy that one line of stages could not carry the whole of it to Wash-

ington; and the contractors proposed, in such cases, to leave a part of it till their next line in order should run, as their contract bound them to carry the mail three times a day when the Postmaster General should require; but it did not require them to run two lines of stages at one and the same time. They were prohibited, however, by the Department from ever leaving any part of the mail, but were required to carry it all at the same time, though it might require more than one line of stages to do so. With this requisition they complied, and claimed compensation for the additional line of stages in such cases. The Postmaster General, about three or four years since, allowed their claim, and made the payment. The contractors continued to perform the same services whenever the weight of the mail was such as to require it, expecting, of course, the same allowance to have been made, the principle having already been settled by the Postmaster General, and their drafts on the Department, which were excepted and paid, were based upon the conviction that their allowance could not be withheld; but they were not formerly admitted by the Postmaster General till the spring of the present year, (1835,) when he decided to make the allowance. In this as in all the preceding cases, (meaning the extra allowance considered in the previous part of this report,) "the payments have actually been made." See the account of the Post Office Department with Richard C. Stockton, marked exhibit No. 31.

This account, which the late Postmaster General directed to be passed to the credit of Stockton and Stokes, amounts to $6,423 46; which amount has been suspended from their credit by the present Postmaster General. The same items which make up this amount, are embraced in the account containing the class of claims now under consideration; but this latter account contains a considerable number of additional and subsequent charges for extra trips from Baltimore to Washington of the same kind as those allowed for by Mr. Barry, in exhibit No. 46, and which I consider as performed under a standing contract with the late Postmaster General, whenever the mail, delivered by the steamboat from Philadelphia at Baltimore, should be too large to be carried in one stage; and therefore, entitled to an award from me, if the amount charged be a reasonable and equitable compensation for the service actually performed.

That the services were performed, is proved by the affidavits of Alexander M. Cumming, marked exhibit No. 50; and that the charge per trip of $20 is reasonable, is established by the depositions of Dennis A. Smith and David Barnum, two experienced mail contractors, marked exhibit No. 51.

I have, therefore, deemed it right to allow for the whole amount of the account containing the class of claims now under consideration, with the exception of the five items following the first, amounting to $1,457 16. The amount allowed is $10,340.

The contractors have presented for allowance a claim of interest upon such sums, as being due to them, have been returned by the authority of the Postmaster General.

It is true as a general rule, that the United States do not pay interest upon sums due to individuals, though in many cases they

demand it of them. This rule is not based upon any idea of there being one rule of justice for the Government, and another for the citizen. It is founded on the idea that the Government is always ready to pay its debts, and if those having claims against it do not present them duly authenticated for payment, it is owing to their own negligence that they do not receive their money, they are, therefore, not allowed interest. But when the Government has detained money and refused to pay it, justice requires, upon its being ascertained afterwards that it was justly due, that the Government should do its creditors what it, when creditor, requires of its debtors, and pay interest for the money thus due for the time it has been retained.

Therefore, the general principle may be readily admitted; yet, there was some difficulty at first in deciding upon the manner in which it ought to be applied in the equitable settlement of the claims in question.

The present Postmaster General had decided that certain large allowances made to the claimants by his predecessor, were unauthorized by law; and, as their amount had already been paid up to the first of April, 1835, he considers it as an overpayment, and retains afterwards in his hands all the current pay of the contractors which was allowed to be legal, as it became due at the end of each quarter, until the sums thus claimed to be overpayments, were reimbursed to the Department.

Congress, to whom the contractors petitioned for relief, passing by the question whether the allowances made by Mr. Barry were authorized by previous enactments or not, direct that their accounts, the U. States having received the benefit of their services, should be settled on principles of equity, and referred the matter to the Solicitor of the Treasury. That officer, on the proof laid before him, decides, with some small variations, that the allowances made by the late Postmaster General, were no more than a just and equitable remuneration for the services rendered. The contractors had received their money, but were compelled to refund it in the manner above exhibited; and they presented a statement, marked exhibit No. 52, of sums of interest which they were obliged to pay to sustain themselves after the suspension of their regular dues, which statement is proved by the oath of their head clerk, A. Malter. If the controversy had been between two individuals under like circumstances, what would a court, acting upon principles of equity and sound morality decide? It is believed that but one answer can be made—the return of the several sums retained, with interest from the time of retention.

Believing that the spirit and letter indeed of the act, required the adoption of the same rule, I have, after mature consideration, awarded interest on the several quarterly sums which were retained by order of the Department, from the time they respectively fell due, until the date of the award. The whole amount of the sums of interest thus awarded, was $6,501 59, to Richard C. Stockton, and $392 34, to Lucius W. Stockton. See account of the quarterly pay of the contractors, marked exhibit No. 53, and the award of Novembar 23d, 1836, marked exhibit No. 55.

In conclusion, I beg leave to remark, respecting the large claims which I have been considering, that while the examination of the committees of the two Houses of Congress into the affairs of the General Post Office was in progress in the winter of 1834'–5, I partook of an impression, then by no means uncommon, that the extra allowances made by the late Postmaster General to Messrs. Stockton and Stokes were extravagantly large, for no better reason, probably, than that they were generally thought so, and that the amount of them was very great. But the careful, and I may say painful, examination of the claims—painful on account of the responsibility of the task, as well as the general prejudice attached to the subject—has thoroughly convinced me of the danger and injustice of suddenly adopting opinions, because they are common, without investigatior. This injustice I had committed, and I feel it to be right on this occasion, to make an atonement for it to the memory of the highly gifted and unfortunate man who made allowances which brought on him a weight of public censure that probably hastened his melancholy fate and carried him down to a premature grave in a foreign land, by declaring in this public manner that whatever other errors he may have committed, a full and laborious examination, under the solemn obligations of official duty, of the evidence vouching the claims of which Congress has made me the unwilling arbiter, has entirely satisfied me of their equity and justice.

V. MAXCY,
Solicitor of the Treasury.

Exhibit F.—Letter of Postmaster General to President United States.

Exhibit F, referred to in plff's petition, p. 10.

POST OFFICE DEPARTMENT,
December 27th, 1836

TO THE PRESIDENT OF THE UNITED STATES:

SIR: I have read the letters of Lucius W. Stockton, esq., in behalf of himself and others, informing you of the award of the Solicitor of the Treasury in their favor, and making the following allegation and complaint, viz:

"The Postmaster General, however, withholds from our credit and pay a large part of this award, the non-payment of which is exceedingly oppressive to us; and we now conceive ourselves bound in duty to ourselves and our creditors, to state the fact to the President, well knowing his determination to see in all cases that the laws are carried into effect."

The suspension made by me in the account of these gentlemen, which produced this application to Congress for relief, amounted to the sum of $122,101 46.

The Solicitor of the Treasury has awarded them, under the act for their relief, the sum of $162,727 05.

I have directed them to be paid under that award, and in obedience to the law, the sum of $122,101 46, being the entire amount suspended and referred to Congress.

The remainder of the award of $40,625 59, is made up of claims which may be divided into three classes, viz:

1st. An extension of certain allowances from the 1st of April to the 31st December, 1835, for alleged extra services - - - - - - -	$26,862 00
2d. Interest - - - - - -	6,894 93
3d. The allowance of certain claims for extra services, most, if not all, of which had been presented to my predecessor, and rejected by him - -	6,868 66
	$50,625 66

In my opinion, the act of July 2d, 1836, authorized the Solicitor to examine and decide upon the claims which had been suspended by me, *and no other*. Such was my impression when the act passed, and such is believed to have been the intention of those who psssed it.

In obedience to the mandate of the law, I have passed those gentlemen $122,101 46, although I have yet to be convinced that they had the least claim in law or equity to one-sixth part of that sum. When the law requires it of me, I shall, with equal promptitude, pay the remaining $40,625 59, although satisfied that not one cent is justly due.

I beg leave respectfully, to suggest that inasmuch as Congress is now in session, the most appropriate resort for the parties complaining, is to that body for an explanatory act, which if it confirm the opinion of the Solicitor, I shall implicitely obey.

With the highest respect,
Your obedient servant,
AMOS KENDALL.

P. S. Since the award was received, and in part executed, a letter has been received from the Solicitor reversing his decision on sundry items, amounting to $1,163 16, and reducing the amount awarded by that sum. Mr. Stockton's letter is herewith returned.

Letter of President United States to L. W. Stockton.

WASHINGTON CITY, *December*, 1836.

SIR: On the receipt of your letter of the 26th inst., I lost no time in referring it to the Postmaster General for his report.

Having received that report I hasten to forward it to you forthwith.

It appearing that there is a difference of opinion between the Solicitor and the Postmaster General upon the extent of the reference under the law to the Solicitor, the Postmaster General having yielded to what he believes to be *all* that was submitted by the law to the Solicitor's decision, and paid the same. But, Congress being now in session, and the best expounder of the intent and meaning of their own law, I think it right and proper, under existing circumstances, to refer it to that body for their decision. I deem this course proper, as the difference in opinion about the extent of the submis-

sion under the law arises between the head of the Post Office Department and the Solicitor of the Treasury, and as, it appears, the Solicitor has reversed, in part, his decision and award.

Yours, respectfully,

ANDREW JACKSON.

Mr. LUCIUS W. STOCKTON,
Acting for himself and others.

Exhibit G.—Memorial to Congress.

Exhibit G, referred to in plff's petition, p. 10.

To the honorable the Senate and House of Representatives of the United States.

The memorial of William B. Stokes, Richard C. Stockton, of Maryland, and Lucius W. Stockton and Daniel Moore, of Pennsylvania, respectfully showeth:

That they applied to Congress at its last session, requesting such proceedings as its wisdom and justice might direct, with regard to certain claims for services performed by your memorialists, under and by virtue of contracts with the late Postmaster General, William T. Barry.

That Congress, by an act dated 2d July, 1836, authorized and directed the Solicitor of the Treasury to settle and adjust the claims of your memorialists, on principles of equity; and "directed the Postmaster General to credit them with whatever sum or sums of money the said Solicitor should so decide to be due them, for, or on account of, any such service or contract."

Your memorialists beg leave to state, that the Solicitor of the Treasury, in obedience to the act, *has* settled and adjusted their claims; and, in compliance with its provisions, made his report to Congress.

And the Postmaster General has carried to the credit of your memorialists the sum of $120,938 30 of the award of the Solicitor; upwards of $80,000 of which was immediately appropriated by the Post Office Department to the payment of its own acceptances, made long ago on the drafts of your memorialists, for, and on account of, their then current pay.

Your memorialists wish chiefly, however, to state, that the Postmaster General has withheld altogether from their credit or pay part of the award of the said Solicitor, amounting to the sum of $40,625 59, notwithstanding the positive injunction of the act.

Your memorialists, therefore, pray that Congress will provide for them such remedy, for this denial of their rights, as in their wisdom may seem right and proper.

Signed,

LUCIUS W. STOCKTON,
For himself and petitioners.

WASHINGTON CITY,
January 2d, 1837.

Exhibit H, referred to in plaintiff's petition, p. 10

Exhibit H.—Postmaster General's letter to the President United States.

POST OFFICE DEPARTMENT,
January 31*st*, 1837.

TO THE PRESIDENT OF THE UNITED STATES:

SIR: The undersigned perceives, by the published proceedings of Congress, that Messrs. Stockton and Stokes, mail contractors, have petitioned for the payment of certain sums of money, alleged to be due them from this Department; and having in his possession facts and circumstances which, in his opinion, conclusively show that their petition ought not to be granted, he deems it his duty to report them to you, that you may, if you think proper, communicate them to the legislative authority.

In January and February, 1835, the committee appointed by the two houses of Congress, to investigate the affairs of the Post Office Department, made their final reports, in which many of its transactions were severely condemned.

Among the matters which received the condemnation both of the majority and minority of the committees, so far as any opinions were expressed by them, were certain allowances to Messrs. Stockton and Stokes, in addition to the compensation stipulated for in their contracts.

On the 1st of May, 1835, the undersigned took charge of the Post Office Department. He became immediately apprised that, within the preceding months of February, March, and April, additional allowances to Messrs. Stockton and Stokes, never known to any of the committees, had been made or entered to their credit, amounting to $122,101 46.

Finding the financial condition of the Department much embarrassed, and that many small contractors had been paid nothing for several quarters, he determined, without looking into the merits of these new allowances, and as a means of relieving the finances from a heavy present charge, to suspend them from the credit of the contractors, which was accordingly done.

In a respectful memorial, the contractors represented that they had already received the money for these allowances, and that the suspension by depriving them of all current pay would speedily lead to their ruin, and compell them to abandon the transportation of the mails.

In obtaining a statement of their account, made out to April 1st, 1835, it was accordingly found, that they had been overpaid enough to absorb the whole $122,101 46, recently entered, and over $8,000 more. It was also found, that they had obtained acceptances from the Department, in anticipation of future receipts, to an amount exceeding $70,000, which had been negotiated in sundry banks.

In this state of affairs, the undersigned felt it to be his duty to en-

ter into the merits of their new allowances, and decide whether they should be restored to the credit of the contractors. After investigation, he came to the conclusion that the principal items of them were not authorized by law; in which decision he was sustained by subsequent opinion of the Attorney General.

At the last session of Congress, the contractors applied by petition for relief. A bill was introduced and passed into a law, authorizing an equitable settlement of their accounts by the Solicitor of the Treasury.

It was believed by the undersigned, and he supposed by every one else, that this act gave the Solicitor authority to examine and adjust upon equitable principles, those items only which had been allowed by his predecessor, and suspended by him, and not to consider and allow claims which had been presented and rejected under the former administration, or such as had never been heard of by the Postmaster General or by Congress.

The Solicitor of the Treasury, however, construed the law as giving him absolute and uncontrolled power over all new claims which might be presented, growing out of the contracts referred to in the acts, and actually awarded the contractors $39,472 47 beyond the full amount of the suspensions.

It was thus virtually decided, that the allowances which had been so unanimously censured by the committees, were equitable and just; that the additional allowances of $122,101 46, never known to the committees were all of like character; and that it was equitable and just to make to them original allowances of $39,472 47 beyond the utmost liberality of the former Postmaster General.

The undersigned differed widely from the Solicitor in reference to the equity and justice of these claims in general. He was as fully satisfied, as the human mind can be, that the contractors were not entitled to $20,000 of the $161,000 awarded. But Congress had taken from him all power over the subject, as far as they gave jurisdiction to the Solicitor, by prereemptorily requiring him to pay whatever that officer might award within that limit. As far, therefore, as the jurisdiction of the Solicitor extended, the undersigned could not refuse to pay without a direct and palpable disregard of the acquirements of the law. But it was considered by him equally his duty to refuse to pay any sums which the Solicitor, through an erroneous view of his legal authority, might think proper to allow, until such payment should be required or authorized by further legislation.

Beliving that the Solicitor had no jurisdiction to consider and allow any claims beyond those which had been suspended before the act of Congress passed, he refused to pay the $39,472 47* allowed by him, over and above those claims.

The reasons on which his construction of the law are based, will be more fully given hereafter.

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*This sum was originally $40,635, and over, but has been reduced by the discovery of an error by the Solicitor.

The contractors memorialized the Senate, with the view of obtaining payment of this new allowance, and their memorial was referred to the Committee on the Judiciary, who have considered the case, and made report to the Senate.

The undersigned felt no responsibility to the country in paying the $122,101 46 awarded under the act of the last session, because it was required of him by other public agents, to whom had been delegated the power to control and direct them in such matters. Nor did he think, at the last session of Congres, that he was called on to volunteer information, as to the nature of the claims, because the proposition was merely to submit them to the arbitrament of an equitable tribunal which, it was presumed, would make full inquiry into their character and merits. But his attitude is now changed. He thinks that the Solicitor, from an erroneous view of the facts and the law, has awarded the contractors $40,635 93 beyond the whole amount he had authority to consider, no part of which is due them in law or equity.

It cannot be paid without further legislation. He verily believes, and he thinks he has in his hands the means of showing that any act of Congress, enabling contractors to obtain payment of this additional allowance, would be the consummation of a great public wrong; and he feels himself called upon, by the position he occupies, to give this information for the use of the legislative authority.

Having done so, he will have relieved himself from all responsibility; and, if Congress then thinks proper to require the payment of these new allowances, it will be his duty to make it.

Having no charges to make against any one, and desiring only to give information, having reference to the future action of Congress, the undersigned regrets the necessity of alluding to any past transactions which cannot be recalled, or of speaking of them in a manner which may be so construed, as in any degree censorious. But he finds it impossible to explain the merits of the claims now in question, and their present attitude, without giving a general history of the contracts and transactions, out of which they have grown; and no private consideration will deter him from the performance of this public duty.

The claims now under consideration arose upon the mail routes from Baltimore and Washington city to Wheeling, and from Washington city to Baltimore and Philadelphia, during the years 1833,–'34–'35.

In the summer of 1831, these routes were advertised for contract during the succeeding four years.

The advertisement on the Wheeling route was for one daily mail to run through from Baltimore to Wheeling in three days four hours; returning, in three days one and a half hours; with a daily mail from Washington city, to connect at Frederick, Maryland.

The claimants in this case, or their representatives, put in a proposal embracing many routes, and among them, the routes from Baltimore and Washington to Wheeling, on which they offered to

carry the mails daily, as advertised, for $4,550 per annum. Upon this proposal the contract was assigned to them.

At the same time they put in another offer, the substance of which, so far as regards these routes, was to carry a daily mail both ways in two and a half days; and another mail three times a week, whenever directed by the Postmaster General, for the additional compensation of $8,950, which was accepted and incorporated in the contract.

They subsequently offered to carry the mails through from Baltimore and Washington to Wheeling, in two days in summer, and two and a half days in winter, for the additional compensation of $6,750 per annum; which offer was accepted.

It appears by the books and files of the Department, that from the 1st of January, 1832, to about the first of May of that year, none of the improved service was performed, the mail being carried through in a daily line, occupying about three days in the passage, as under the old contracts. Letters on file, from the contractors, dated 20th and 3d April, 1832, show that they were then preparing for the increased speed. These letters inform the Department, that contractors were about to make daily the tri-weekly accommodation line of stages run by them; and ask, as a matter of favor, that they may be permitted to carry the way mails upon it, to prevent the detention of their swift line, by stopping for the opening of the mails at so many small post offices. By a letter, dated 24th April, 1832, this privilege was granted upon condition that the second line should continue to run daily.

Soon after the contract was formed, the mail appears to have been carried from Baltimore to Frederick, on the rail road; and from the 1st February, 1832, the sum of $2, 046 per annum was added to the contractors' compensation therefor.

On the 1st September, 1832, the second daily line was cut down to an every other day line, from Hagerstown to Wheeling, having run daily about four months.

The first schedule for the swift line was issued on the 18th April, 1832, and was carried into effect about the 1st May. In September of that year, the contractors produced proofs that, in consequence of the Cumberland road being broken up for repairs, it was scarcely possible, and not at all safe, to run at the speed of two days. In consequence they were, on the 3d October, allowed two and a half days each way; and, on the 22d December, they were allowed two days nineteen hours going, and two days twenty hours returning.

In their account, for the first quarter of 1833, contractors charged $6,400 for running a second daily mail during the year 1832, which, upon a statement of the superintendent of mail contracts that such a mail had been run from the 1st Jaunary, 1832, was allowed.

In the same account the contractors charged $9,812 for forty extra horses, and twenty two postillions, alleged to have been necessarily employed by them, in consequence of the increased weight of the mails, to enable them to ascend the mountains with the requisite

speed, which charge upon a like certificate, that they had been employed from the 1st January, 1832, was also allowed.

These allowances thenceforward became a part of the contractors annual compensation, which was considered to be as follows, viz:

Original annual pay as accepted - - -	$4,550 00
First improvement of speed and tri-weekly mail -	8,950 00
Rail road service - - - - -	2,046 00
Second improvement of speed - - -	6,750 00
Second daily mail - - - - -	6,400 00
Extra horses and postillions - - - -	9,812 00
	$38,508 00

On the 27th March, 1833, the contractors, in a letter to the Department, represented that the weight of the mails had enormously increased; and that it was impossible to convey them by the means provided. For an advancement of twenty-five per cent. on their whole improved compensation, they offered to put such additional stock and vehicles on the road as should be adequate to this object.

The second daily mail was not then running, although they were under pay for it. As the most obvious mode of providing for the transportation of the increased mail matter, the Department, by letter dated 28th March, 1833, ordered them to run a second line of four horse post coaches, reserving the question of compensation. But, as it appeared, they were already under pay for such a line, nothing could be added to their compensation on that account.

On the 3d June, 1833, they applied again to the Department for an extra allowance of fifty per cent. on their contract pay, on the ground that they had been obliged to make great extra provision for conveying the increased weight of mails.

There is evidence that the Postmaster General was inclined to authorize this allowance, and made an entry to that effect on a paper not placed on the files, and sent to the files another paper, on which he directed the application to be suspended; and that it remained suspended for further consideration until February, 1835.

On the 23d April, 1833, the contractors were directed to run through in two days and six hours each way, being allowed six hours more than their contract time. In this condition were the contractors' service and pay at the time of the retrenchments ordered in November, 1833.

The orders of retrenchment, upon this portion of their service, were as follows, as contained in letters addressed to the contractors, viz.

"To Stockton & Neil.

"Baltimore, Md., *November* 19, 1833.

[Nos. 1201, 1372, 1389, 1502, 1504.]

"Gentlemen: Order of Department requiring increased expedition, so as to run from Baltimore, Washington, through Wheeling to

Cincinnatti and Maysville, in four days in summer, and five and a half days in winter, and "for other improvements expressed in contractors letter of December 23d, 1831, rescinded from 1st December, 1833, with the exception of the three additional trips on the National road, which are to be retained as an offset against certain reductions covered by their proposals. Compensation $5,950 to cease, and one month's extra pay allowed."

"S. R. HOBBIE."

"NOVEMBER 19th, 1833.

"Messrs. STOCKTON & STOKES,
Baltimore, Maryland,

[No. 1201, 1389.]

"Baltimore to Wheeling. Order allowing $9,812 a year for postillions and extra horses, rescinded from 1st December, 1833, as increased speed will be dispensed with. Compensation, therefore, to cease, and one month's extra pay allowed.

"S. R. HOBBIE."

These orders left the pay of contractors, from the 1st January, 1834, as follows, viz.

Original annual pay as accepted - - -	$4,550 00
First improvement of speed, and tri-weekly mail -	8,950 00
Rail road service - - - - -	2,046 00
Second daily mail - - - - -	6,400 00
	$21,946 00

The retrenchment had scarcely taken effect when the Department was pressed to restore to contractors the heaviest items retrenched, and to make still further allowances. By letter, dated 15th December, 1833, the contractors urged the restoration of the allowance for extra horses and postillions on the ground that, although the additional speed upon which it was originally based had been dispensed with, this additional force was still necessary to get along with the increased weight of the mails, and they again asked for the fifty per cent. allowance which had been applied for in June of that year. The result of the written and personal application made at that time, is shown in a letter from the Department to contractors, dated 28th January, 1834, in which they were informed that, if they continued to employ the extra horses and postillions, the Department would pay for them when it was in a condition to do so; but that no payment should be made under that order, without a further order from the northern division.

This letter did not meet the views of the contractors, and not being assented to by them, was always treated as null and void.

A private letter of subsequent date, from the Postmaster General to one of the contractors, has been exhibited, in which an assurance

was given, that something should be done to meet his expectations, showing that nothing of that sort had then been done.

On the 23d April, 1834, the schedule for summer service was issued to contractors, allowing them two and a half days going out, and two days fifteen hours returning; the former being the exact time fixed in the first improvement, and the latter three hours more.

On the 23d November, 1834, they were allowed two days twenty-three hours going out, and three days returning, being eleven and twelve hours more than contract time after the retrenchment.

The service and pay were in this condition when the committees of Congress made their investigation. The committee of the Senate condemned the proceedings and allowances in this case, in general terms, and the minority of that committee expressed an opinion upon them. The committee of the House commented on and censured them, and others connected with them, in the following terms, viz:—

"The committee have not examined this contract with a view to form an opinion of the justice of the extra allowance in each particular instance. It might be quite impracticable, from the contract and the endorsements upon it, to discover, precisely, the additional services for which each separate extra allowance was made. It is a fit case for general comment; and one in which particular detail may well be dispensed with.

"Either there was very great inattention in adapting the advertisements to the proper service, or these extra allowances had been made most improvidently. The service in the advertisement was secured in the autumn of 1831, at $37,000; yet it is rapidly run up to more than $100,000. Certainly it is not an ordinary case, and some extraordinary reason should exist for this sudden and enormous increase.

"Additional lines of stages were ordered and paid for. Postillions and extra horses, tolls, and ferriages, were all paid for; but upon what ground of reason, propriety, or justice, some of these allowances were made, the committee do not perceive.

"Many of these services, however, have been retrenched, amounting in the aggregate to $35,000. This receives the hearty approval of the committee. They believe that it was a contract which demanded, at least, that reduction; and they think the public interest would not suffer by an increase of that amount.

"It is a contract for twenty-two routes, at a gross sum. It contains provision for two separate classes of additional improvements, both of which were ordered; add to which, that extra has been allowed upon extra, until the original sum is but little more than one-third of the total amount of the expenditure."

The minority of that committee commented on these allowances, pages 111 to 115 of their report, in more severe terms; coming to the conclusion, that upon the basis presented, the contractors would receive in four years $78,040 more than they rendered service for, or were entitled to, according to law.

Neither the majorities nor minorities of either of the committees had any knowledge of those allowances embraced in the Solicitor's award, which adds no less than $161,573 93 to those on which their comments and conclusions were based.

When the undersigned entered upon the duties of Postmaster General, he found the following order entered upon record, viz.:

"*March* 31*st*, 1835.

"It appears there was an order drawn early in May, (June,) 1833, allowing 50 per cent on pay, from Baltimore to Wheeling, on account of the increase of the weight of mails, impediments in National road, &c. It was held under suspense for further consideration, and, in February, 1835, confirmed by direction to financial branch, to place it to the credit of contractors down to the time of retrenchment, January 1st, 1834. Now, order is given by the Postmaster General to continue the allowance of 50 per cent. from that date."

This order did not restore any of the retrenchments, but consummated a new allowance. It was the evident fulfilment of the assurance given to the contractors, in the private letter of the Postmaster General, in the winter of 1834. On reference to the account books, however, it was found that both the retrenched allowances had been entered upon the 1st January, 1834, to 31st March, 1835, inclusive. Upon enquiry, the undersigned was assured that those entries were erroneous; that they had been made in consequence of the construction which the contractors put upon the recent order, maintaining that, in effect, it restored the retrenched allowance; that the Postmaster General had been subsequently referred to for an explanation; that he had declared both to his second Assistant and principal pay clerk, that it was not his intention to renew the retrenched allowances, but that the book-keepers had neglected to correct the error. In this manner those items came to be a part of the suspensions ordered by the undersigned, upon his accession to the Department.

The retrenched allowances ordered and suspended were	$20,702 50
The 50 per cent. allowance do. do	62,575 50
Whole amount suspended - - - -	83,278 00
To these the Solicitor has added an extension of the retrenched allowances to 31st January, 1835 -	12,421 50
And a like extension of the 50 per cent. - -	14,440 50
Making the whole amount allowed by him on these routes - - - - - -	$110,862 00

Still waiving the question of law, the undersigned will briefly advert to the grounds in which these allowances are made and extended.

To justify a restoration of the retrenched allowances in law, it would seem that they must have been again ordered. To justify it in equity, they must at least have been performed.

In fact, they were neither ordered nor performed. That they were

not ordered is proved by the record, both negatively and affirmatively; *negatively*, in the absence of any order rescinding or countermanding the order of retrenchment; *affirmatively*, in the letters of the Department, directing the contractors to run through in two and a half days, and back in two days fifteen hours, during the summer of 1834 and 1835, and allowing them about three days in winter.

The undersigned has heard it said that his predecessor, in the winter of 1833,–'4, promised to restore these allowances, and said he had done so.

What he then *did* is shown by the letter of the 28th January, 1834, which was not accepted by contractors.

What he did not do is shown by the absence of any order to that effect, and his declaration, when he came to act finally, that he had no intention to restore them.

It is alleged, as a reason for extending these allowances, that the undersigned did not countermand them. What could he countermand? He could not countermand any order restoring them, for none such existed. He could not countermand the performance of the services, for contractors were not performing them nor pretending to perform them. They could not perform them without disregarding the arrangements and orders of the Department. A suggestion that they were performing any extra service with a view to future compensation, would have been met by an instant declaration that no such practice could be tolerated, and no such thought must be entertained. But it is only after the contract has closed, and an equitable settlement of accounts is in progress, the Department learns, for the first time, that certain extra services have been performed, without its knowledge, contrary to its orders, and in opposition to the known wish and will of its responsible head, which create an equitable claim upon it for $26,862.

To the undersigned the principle is alarming. It is, that the declaration of the head of a Department, now in his grave, as to what he would do or had done, are to be taken as a solemn contract, in contradiction not only of his own subsequent declarations, but of the record itself, and he made the basis of drawing from the Treasury untold thousands.

The establishment of such a principle would open a new approach to the Treasury, as broad as the most enterprising depredator upon the public could devise or desire.

On this point the undersigned has only to add the declaration, that after he took charge of the Post Office Department, the additional speed which formed the basis for them was never ordered or performed, and that any allowance, therefore, would be wholly without consideration.

To the undersigned, the 50 per cent. allowance appears to have been equally without consideration, from beginning to end. It is made to sweep back from the spring of 1835 to the 1st January, 1832, and brought down to the 31st December, 1835, amounting to $77,016. It appears to have been granted to pay for the conveyance of an increased weight of mails. That the mails greatly increased on these

routes there is no doubt, but their weight, as stated, if intended as an average, is much exaggerated. There is abundant proof that, on an average, they never were a load for one four-horse post coach daily, with the exception of a very small weight of way-mails carried in the slow line. The whole mails, with many passengers besides, were carried in the swift line during the whole four years. By their own showing the contractors at first carried nine passengers in that line; and one ground of complaint, in March, 1833, was, that in consequence of the increase of the weight of the mails, they had been obliged to reduce the number of passengers to six. All the statements that the weight of the mails were so enormous, that one coach could not carry them, are to be understood as meaning that one coach could not carry them in addition to an ordinary load of passengers.

The first allowance alleged to have been made necessary by the increased weight of the mails connected with the two days speed, was $9,812 for extra horses and postillions, to enable contractors to haul their heavy load of mails and passengers up the mountains with sufficient celerity.

When, in March, 1833, they complained that they had been obliged to reduce their passengers from nine to six, in consequence of the increase of mail matter, they were allowed another full daily line at an annual charge of $6,400, which ordinarily carried but a few pounds of mail, and was almost wholly devoted to passengers.

The first and second daily lines, with the extra horses and postillions, constituted the whole means furnished by contractors for the conveyance of the original mail and the increased mail. These, as has been seen, were all paid for by specific and liberal allowances, leaving one whole coach, and at least half the other, for the conveyance of passengers.

What, then, have contractors furnished to entitle them to this allowance of $77,016? Were there other lines of stages, other extra horses and postillions, or other increased speed not yet heard of, to require or justify this allowance? If there was not a single stage; not a single horse; not a single postillion, not otherwise liberally paid for; employed in the service of the Department, and if every moment's speed and increased speed was otherwise liberally paid for, what consideration has the Department received for this 50 per cent. allowance?

The undersigned believes that, by ordering the second daily line in March, 1833, the Department made ample provision for the transportation of the increased mail matter; and he has yet to learn that any other was ever made by contractors. This second mail never was retrenched until the end of the contract. It was only the increase of expedition, and its incidents, that were pruned off, leaving two daily four-horse post coach lines to transport the mails at an ordinary speed. Indeed, it was reported to the undersigned, after his accession to the Department, that the second line was of very little importance as a mail line; and he had no doubt it might be discontinued, as such, without any public detriment, its continuance being justified only as a means of making amends to the contractors for the unusual, and when

they contracted, unexpected amount of mail matter thrown upon their swift line.

From these considerations, the undersigned believes the whole 50 per cent. allowance as destitute of an equitable, as it was decided to be of a legal basis; and that no step ought to be taken by Congress to produce the payment of that portion now withheld, amounting to $14,440 50.

The rest of the suspended allowances were made upon the routes from Washington, through Baltimore, to Philadelphia.

The advertisement of 1831 invited proposals for one daily mail between Washington and Baltimore, to run through in five hours, and supply the way offices.

Proposals were also invited for one daily mail from Baltimore to Philadelphia, to run through one way in 23 hours, and the other in 22, and supply the way offices.

These, and several other routes, were assigned to R. C. Stockton, for Stockton & Stokes, at a combined bid of $14,500, as advertised.

At the same time Mr. Stockton offered, for the additional sum of $20,150, to make a variety of improvements, among which were the following, viz.:

"On route No. 1,371, Philadelphia to Baltimore; No. 1,372, Baltimore to Washington. I will leave Washington, during steamboat navigation, with the great mail after its arrival from the South, say at 12 o'clock midnight, arrive at Baltimore by 6 A. M.; leave Baltimore at 6½ A. M., and arrive at Philadelphia at 6½ P. M., same evening; returning with equal expedition, or as required; or say, leave Philadelphia at 6 A. M., (New York mail having arrived,) and reach Baltimore by 6 A. M., and Washington by 12, same night," &c.

"Or, I will carry the mail throughout the season from Washington to Baltimore, and thence to Philadelphia, to reach Baltimore in 4¾ hours, and reach Philadelphia by 6 ½ P. M., the next morning, after its departure from Washington; departing from the latter place as at present, (or at pleasure of the Department,) and return with like expedition over the whole (both) routes, or as requested, giving under this arrangement a second daily mail to the cities of Philadelphia and Baltimore. I will also give, on route No. 1,372, from Baltimore to Washington, two additional daily mails, to be run as the Department may direct," &c.

"And on such (or all) of the above routes as may be required, I will furnish guards and express mails whenever and wherever required."

This proposal was accepted, and, in substance, incorporated into the contract; twenty-three hours being fixed for the last improvement offered between Washington and Philadelphia.

Some diversity of opinion has arisen in relation to the amount of service on the routes in question, stipulated for in this contract; but to the undersigned the difficulty seems to have arisen from considering it in connexion with another contract, for steamboat service, between Baltimore and Philadelphia. The contract of Stockton and Stokes was of itself obviously a provision for the *whole mail service between*

the two cities, and should be considered in that light. The service intended seems clearly to have been as follows, viz.:

1st. One daily mail from Washington to Baltimore, and from Baltimore to Philadelphia, as advertised.

2d. A second daily mail from Washington to Baltimore in six hours, and from Baltimore to Philadelphia in twelve hours, to be run *during "steamboat navigation."*

Or, if the Department preferred it, a second daily mail from Washington to Philadelphia in twenty-three hours, to be run "*throughout the season*," giving a second daily mail to Philadelphia and Baltimore."

The first alternative, evidently, contemplated a steamboat mail from Baltimore to Philadelphia, as it required six hours between Washington and Baltimore, 38 miles, and only 12 hours between Baltimore and Philadelphia, 98 miles. The second, evidently, contemplated a rapid land line all the way, and throughout the year, requiring only $4\frac{3}{4}$ hours between Washington and Baltimore, and about 18 hours between Baltimore and Philadelphia. If the Department took the first alternative, it would have a second daily mail from Washington to Philadelphia by steamboats, in part, run through in 18 hours, *during steamboat navigation* only; if it took the latter, it would have a second daily mail in stages run through in 23 hours, throughout the year.

This exhibits a harmonious and rational plan for the whole mail since on that line—such an one as might be expected from an experienced and able contractor, who thoroughly understood the subject, and wished to keep the whole service in his own hands. The service performed on these routes under this contract was, as nearly as the undersigned can ascertain, as follows, viz.:

From the 1st January, 1832, to the opening of steamboat navigation in the spring, the contractors ran one daily line only from Baltimore to Philadelphia; and a large portion of the mail matter was sent by another line, called "*the express mail*," which was run by them, in part, through York and Lancaster, Pa., at a cost of $6,300 per annum to the Department, $3,150 of which was paid to Stockton & Stokes.

Upon the opening of navigation in 1832, their daily line was cut down to three times a week from Baltimore to Elkton, running daily from Elkton to Philadelphia, the Department having contracted with the steamboat company to carry the mails twice a day between Baltimore and Philadelphia, at an annual charge of $7,000.

Upon the closing of navigation in the winter of 1832,–'3, the contractors run one daily line *only*, and a large portion of the mail was sent by way of York and Lancaster, as in the preceding winter.

In the spring of 1833 an inquiry was set on foot to ascertain whether the mail could not be expedited along the Atlantic line, and a connexion affected, which should be more satisfactory to the public. A plan was digested, and the contractors between Washington, Baltimore, and Philadelphia, undertook to run through in 20 hours. Accordingly, on the 27th November, 1833, the Department furnished them a schedule for their fast line, allowing 20 hours to run through, having, on the 4th day of that month, furnished them with a schedule

for their slow line, allowing 27 hours; but the books of the Department show that, as late as 31st December, neither of these lines was running, the navigation being still open.

This, after having performed the service in the summer of 1833, in the same manner as in that of 1832, they commenced running two lines for the first time, as provided in their contract, on the suspension of steamboat navigation in January, 1834. The only thing done by them which they had not contracted to perform, was running through in 20 hours instead of 23, thus furnishing an increase of speed equal to 3 hours between Washington and Philadelphia.

These two lines had ceased to run, as the books show, prior to the 10th March, 1834, having run but about 60 days. Steamboat navigation having commenced, the contractors fell back to their tri-weekly service between Baltimore and Elkton, and daily between Elkton and Philadelphia.

In the winter of 1834–'5, the swift line commenced running between the 17th and 25th December, and could not have run more than 90 days. Upon the recommencement of steamboat navigation, contractors fell back to the service of the preceding summer.

Their contract ended on the 31st December, 1835; and it was but a few days in that month that they run even one daily line.

Nothing could seem to be more plain than that, for three years and seven months of this contract, the contractors had never performed more than half, and three-fourths of the time, less than half the service they had contracted to render, and were actually paid for. For about five months on the routes from Washington to Philadelphia, they exceeded their contract service by increasing the speed 3 hours, which was but a small equivalent for the service which had been dispensed with. Yet, in the fall of 1834, they set up a claim to extra compensation for running the swift line during the preceding winter, charging $16,200 for 90 days service, being about 30 more than it appears to have lasted; and, in the spring of 1835, they claimed $18,000 for the like service, 100 days, during the preceding winter, which appears to be some 10 days more than it lasted. The ground on which these claims were set up was, that this was an additional mail, not required by their contracts, and undertaken by them under a special arrangement. To sustain this position they employed counsel to argue that the words "*during steamboat navigation*," and "*throughout the season*," in their proposals, meant the same thing, and that they were bound to run *three daily mails during steamboat navigation*, and when steamboat navigation was suspended *only one;* thus throwing one of the winter lines provided for in the contract into the summer, and making room for an extra line in winter.

On the first sum charged, $4,460, and of the second, $4,955½, in all $9,415½, belonged to that part of the route which lies between Washington and Baltimore.

On that route contractors were under contract and pay, to run the following mails, viz.:

1. A daily mail in 5 hours, as advertised.
2. A daily mail from Washington, through Baltimore, to Philadel-

phia, "during steamboat navigation" in one word, "or throughout the season" in another, at the option of the Department.

3 and 4. Two additional daily mails provided for in a separate clause of the improved bid.

5. An additional daily mail until 31st December, 1834, provided for in an accepted offer for improvements upon the route from Washington to Winchester, Va., Leesburg, Va.

Of these five daily mails, contracted and paid for, not more than *three* were ever run, and often but two.

When the swift line went into operation on this road, the ordinary line for the great mail ceased to run, so that there were still but two, or at most three, daily mails in operation. Yet the contractors maintained that this mere arrangement for increased speed, although it superseded a mail they were still paid for, was a contract of an *additional* mail, and ought to be paid for as such, making a sixth daily mail, while it ran, so far as pay was concerned, between the two cities.

These claims, being at the rate of $65,700 per year, were strenuously resisted by the assistant Postmaster General, under whose superintendence the arrangement for improving the speed had been put in operation, on the ground that contractors had done nothing more than they were bound by their contract to do, and were paid for doing, except an increase of 3 hours in speed, for which only they ought to be paid.

However, in April, 1835, the first claim of $16,200, and a like sum for the winter of 1834–'5, was allowed, making the sum of $32,400, which was entered to contractors' credit, and constituted a part of the suspensions ordered by the undersigned.

It would seem that, in an equitable adjustment of these claims, the services paid for, and not performed, should be taken into the account.

If the construction of the contract herein suggested be correct, the contractors should be charged with the value of one daily mail from Baltimore to Philadelphia during the four years, and for more than nine months with the four weekly trips from Baltimore to Elkton, neither of which was performed, though paid for, and also with three daily mails at least, paid for, but not carried between Washington and Baltimore, which would clearly balance the alleged extra service. But, if the construction of the contract adopted by the contractors' counsel be correct, and they were bound to run between Baltimore and Philadelphia three daily lines in summer, and only one in winter, they would in equity be left in much the same condition.

In that event they are justly chargeable with two and a quarter lines, they were paid for running in summer, but did not run; as also with the two or three mails they were paid for running on the road from Washington to Baltimore, but did not run; and this would probably balance their claim for extra service; so that it would seem to be perfectly immaterial in a court of equity, whether this service is construed to be extra service or not. But the Solicitor seems to have entirely overlooked these just claims of the public, and instead of de-

ducting any thing for the very great services paid for, but not performed, he added, in his equitable settlement, $1,800 to the allowances made by the former Postmaster General.

Thus [it] was decided to be equitable and just to pay contractors an extravagant price for this alleged extra service, when, according to their own construction of their contract, not half the regular service paid for had ever been performed, without giving the Department credit for the failure.

And, what is more remarkable, it was decided that this was an *additional* line on the Washington road, when in fact another line had been withdrawn to make way for it; and that it was equitable and just to pay for the line that *was* withdrawn, as well as that, which took its place—making on the pay list, six daily mails between Washington and Baltimore, when only *three* or *three* were run.

But even six daily mails appear not to have been sufficient on this road. An account for special services was made out, and presented by the contractors, in which, among other things, they charged "for running second coach, with double mails from Baltimore to Washington, when the mails were too heavy for one coach," during the years 1832–'3–'4, and the first quarter of 1835, 455 trips, at 20 dollars per trip, amounting to $9,100, being more, per annum, than their contract pay for a full line.

These claims had been presented to the late Postmaster General, who allowed such as bore date prior to the 31st March, 1833, $4,020, and declined allowing the rest. But in the recent equitable settlement of the contractors' accounts they have *all* been allowed.

Thus it has been decided to be equitable and just to allow for extra coaches, to carry the mail, on a line where six daily lines of four horse post coaches were already paid for a part of an year, and for the balance of the year, five, though but two or three were run, on a line where contractors were bound, by their contract, to furnish express mails whenever, and wherever required, on a line where the entire great mail, with all its natural increase, has been carried for the last 18 months, and is now *in one moderate sized wagon.*

The only remaining portion of the award not executed, is the allowance for interest on suspended pay.

Still, waiving the question of legal authority in the Solicitor, the undersigned has to remark, that contractors were overpaid $8,000 on the 1st April, 1835, and had been overpaid in quarter or less sums during most, if not the entire period, of their contracts, while multitudes of other contractors were without pay.

It would seem but even-handed justice, in an equitable settlement, that the Department should have had the benefit of interest also in all its overpayments. But none was allowed. In addition to this oversight, the Solicitor has allowed interest on one month before the moneys due could bear interest even upon principles which regulate private transactions.

The clause in the contracts in relation to the times of the payment, is as follows, viz:

The said Postmaster General covenants with the said contractor

to pay as aforesaid, for the carriage of the mail as aforesaid, at the rate aforementioned, quarterly, in the months of May, August, November and February.

From this, it is obvious that the Postmaster General *has the whole* of the months named to pay in; and that, until the end of those months, sums unpaid cannot bear interest either in law or equity.

Yet, the Solicitor has calculated and allowed interest in each case from the first day of the months in which the debts are alleged to have become due.

The whole amount allowed by him at interest, and remaining unpaid, is $6,893 93.

Before the undersigned enters upon the consideration of the legal authority of the Solicitor to consider and allow other claims than those suspended, he deems it necessary to advert to the proceedings between the Department and that officer, while the case was pending. On first receiving the Solicitor's award, in part, the undersigned expressed his surprise to him, by letter, at the construction he had given the law. After some discussion, the award was withdrawn with the view, as was supposed, that it might be reviewed and corrected. Some days afterwards, a letter was received from the Solicitor inclosing a very brief opinion of the Attorney General, declaring, in general terms, that he thought the Solicitor had jurisdiction of other claims than those suspended. Being sure, from the tenor of the opinions, that the specific points in issue had not been stated to the Attorney General, the undersigned inquired of him, and learnt neither the views of the Department nor even the fact that any difference of opinion had arisen between the Solicitor and its head, had been communicated to him.

On being asked whether his opinion was so clear that a history of the act, and a specific statement of the points and principles involved, might not change it? He replied, that it was not the opinion given, having been formed upon a cursory examination of the act, without a case presented. As the opinion of the undersigned was formed and clear, he had no motive to trouble the Attorney General with a review of the case, and now alludes to the subject only to show how much importance is due to that opinion thus elicited.

The grounds upon which is based the opinion of the undersigned, that the Solicitor has transcended his jurisdiction, are as follows, to wit:

1st. The act of Congress cannot be construed to be more than commensurate with the object of legislation. Certain allowances had been entered to the credit of contractors, and suspended therefrom. These suspensions were generally known and talked of. To be relieved from them was the object of the contractors' petition to Congress. To relieve them as far as equity would admit was the object of Congress in passing the law. No other, or further claims, had been heard of, or imagined by the Department, the public, or by Congress. The only object of legislation, therefore, was those suspensions.

2. The language of the act is consistent with that object. It authorizes the Solicitor of the Treasury "to settle and adjust the claims

of William B. Stokes and Richard C. Stockton, of Maryland, and Lucius W. Stockton and Daniel Moore, of Pennsylvania, for extra services performed by them as contractors for carrying the mail, under and by virtue of certain contracts therefor, by them alleged to have been made and entered into with them, by William T. Barry, late Postmaster General of the United States, and for that purpose to inquire into, and determine the equity of *the* claims of them, or any of them, for, or on account of, any contract, or additional contract, with the said Postmaster General, on which their pay may have been suspended by the present Postmaster General, and to make such allowances therefor, as upon a full examination of all the evidence, may seem right according to the rules of equity."

The definite expression, "*the claims*," can have reference only to something fixed and known; and the phrase "*on which their pay may have been suspended*," points directly to the claims referred to. It could not be otherwise understood by Congress, than as embracing *the* claims which had been suspended in the Department, and formed the object, and the sole known object, of the contractors' complaint and petition.

3. To construe the expression, "the claims," to mean *any* claims, is to pervert the meaning of words, and render the act of Congress a violation of all those rules of prudent caution, which have regulated their legislation in reference to public accounts. In the general system for that purpose, they have carefully provided, that the settlement of the most trifling claims shall undergo, or be liable to a revision before they shall be paid. They are first examined by Auditors, whose decisions, in all cases, are subject to revision by Comptrollers, before they can approach the Treasury for payment. As the suspended claims in this case were supposed to have been once allowed, it was no violation of these safe principles to provide that they should be revised by another public officer, and, if found equitable and just by him, should be paid. But, if the act is to be construed as authorizing the Solicitor to credit and allow claims, which never had been acted on or heard of [by] the former or present Postmaster General, it is in violation of the principles which have governed Congress in all their general legislation. It confers on one man unchecked and uncontrolled, upon his sole opinion and decision, the power to drain the Treasury of untold thousands. It could not have been the intention of Congress to confer such a power.

4. According to his own construction of the act, the Solicitor had no legal authority to allow *special accounts*, nor any accounts not arising under "certain contracts" by them alleged to have been made and entered into with them by *William T. Barry, late Postmaster General*," nor any not arising under contracts so made, "on which their *pay may have been suspended by the present Postmaster General*." Two things are necessary to give him any jurisdiction whatsoever, viz:

1st. A contract by W. T. Barry, late Postmaster General.

2d. A suspension of pay, by the present Postmaster General, upon that contract.

Yet the Solicitor has allowed claims which are entirely destitute of these essential requisites to give him jurisdiction. He has allowed

$1,240 for one month's extra service in the spring of 1831, between Baltimore and Philadelphia, under a contract made by the Hon. John McLean, in 1827, on which there is no pretence that contractors' pay has been suspended by the present Postmaster General.

He has allowed claims arising under an alleged contract, the pay on which, according to his construction, had been suspended, not by the present, but by the late Postmaster General. An order of the Department always to bring on from Baltimore the entire steamboat mail for the South, is construed by him into a "standing contract," entitling them to pay for additional coaches employed in that service, although the parties were bound to run several additional lines, "as directed by the Department," which they did not run, and to furnish "express mails, whenever required, without charge." The contractors presented an account to the late Postmaster General for extra coaches thus employed, which he allowed down to March 21st, 1833, when his second Assistant took charge of the mail contracts in the Northern division, and *declined allowing the balance.*

The pay on that "standing contract," therefore, was suspended by the *late* Postmaster General, and not by the *present;* and, in undertaking to consider any claims arising under it, the Solicitor has transcended his jurisdiction even under his own construction of the law.

But the latter now construed to be a "standing contract," was always considered in the Department one of its usual orders to contractors as to the manner of performing their contract service.

The mail was too heavy to be carried in one coach *with an ordinary load of passengers.* The whole mail, and all the passengers, could not be brought in one coach, and some of the mail bags were left behind in the competition.

The Department ordered them to bring the whole; and, to get along with mail and passengers both, they divided them between two coaches. The charges made for the second coach were not, and were not pretended to be, made in accordance with any contract, but were to all intents and purposes *special*, and for *special services.* As such, the Solicitor had no jurisdiction over them under the act of Congress.

If, therefore, the order of the Department be considered a contract, the Solicitor had no jurisdiction over the claims presented, because the pay was not suspended by the present Postmaster General, but had been suspended by his predecessor.

If the order was not a contract, then the claims were *special*, and not arising under any contract made by W. T. Barry, late Postmaster General. The Solicitor had no jurisdiction over them.

5. The act of Congress conferred on the Solicitor no legal authority to consider or allow any claim whatever for interest. The question has been settled, the undersigned believes, by repeated decisions from the foundation of the Government, that authority to settle a claim on equitable principles, does not confer authority to allow interest on such claims, *unless it be specially granted.* He knows such has been the construction of some of the accounting officers; but in this

case, that question does not arise, for the Solicitor has not allowed interest on the claims he has acted on, but upon "*current pay withheld,*" with which he had nothing to do.

He had, in the opinion of the undersigned, no more authority to settle a claim for interest, set up by these contractors, in current pay, which they did not receive when due, than he had to allow interest to the hundreds of small contractors who had been in the same situation during several previous quarters, and some of them for years.

There is not a word in the act of Congress from which such power can be extracted. But, if he had made the allowance upon the sums suspended, it would, in the opinion of the undersigned, be equally without authority.

It was "*claims for extra service*" only, and not interest on those claims which he had authority to adjust.

This point appears to be too plain to require elucidation.

6. It is inconceivable that Congress intended to sanction the principle that contractors can raise a claim in law or equity against one of the Executive Departments by performing services without its knowledge, and contrary to its orders, in defiance of what they know to be the settled policy, the wish, and the will, of its responsible head. This case, if the construction of the Solicitor be correct, presents the singular and unprecedented spectacle of the head of Department struggling with all his energies to extricate it from deep pecuniary embarrassments, while a portion of the contractors under his direction were secretly rendering, or assuming to render, extra services which they knew he supposed were countermanded, and would have instantly countermanded if such had not been his belief, with a view of bringing upon him, at a convenient time, claims for more than $26,000.

Such a principle takes from the head of a Department his legislative control over its administration, and throws it into the hands of the contractors. He can never know the extent of his service, or the magnitude of his expenditures; the one being concealed from his knowledge, and the other taken from his control. It is impossible that Congrsss could have intended to set such a precedent, or sanction such a principle.

The concern of the undersigned on this point is the greater, because he has learnt that the other contractors have similar claims ready to be presented when the principle shall be established, and he seriously apprehends that instead of applying the surplus income of the Department to the extension of mail facilities, and the perfection of the service, he shall be obliged, if the principles advanced in this case be established, to apply the greater portion of that surplus income for some time to come, to satisfy the equitable claims of a few large contractors whom the committees of Congress, two years ago, unanimously reported to have received already hundreds of thousands more than was due to them in law or equity.

The undersigned has thus attempted to make plain the facts, and the law in this important case. He thinks he has conclusively shown that a large part of the contract service on the routes in question,

though fully paid for, was never performed. He thinks he has also, conclusively shown—

1. That the 50 per cent. allowance, sanctioned and extended by the Solicitor, was wholly without consideration, and not due in law or equity - - - - $77,016 00
2. That the allowance for increased speed, and extra horses and postillions, were never restored by the late Postmaster General after the retrenchment of 1833; that the service in which they were based was never performed, and that they are without consideration - - - - - - 32,124 00
3. That the alleged extra mails from Washington to Philadelphia, in the winters of 1833–'4 and 1834–'5, were, put on by their contract lines, expedited three hours; and that, if they were admitted to be extra service, they constitute no adequate equivalent for the large amount of regular service paid for, but confessedly not performed - - - $34,200 00
4. That the claim for special services in the spring of 1831, between Baltimore and Philadelphia, is clearly beyond the jurisdiction of the Solicitor - - 1,240 00
5. That the charges for extra coaches on the line from Washington to Baltimore, were charges for performing a part of their regular services on a road where they were paid for running five or six daily mails, and actually only run two or three, being also bound to run express mails whenever required - - 9,100 00
6. That the allowance for interest is without equity, and has no warrant in law - - - 6,893 00

Whole amount of Solicitor's award $161,573 93

Of which there has been paid in obedience to law, the whole amount of suspensions, jurisdiction over which was conferred upon the Solicitor by act of Congress - - - - - $122,101 46

Leaving unpaid the sum of - - - 39,472 47

This sum awarded, as the undersigned believes from an erroneous view of the act of Congress and the facts of the case, is composed of the following items, viz:

Extension of 50 per cent. allowance from 1 April, 1835, to December 31st, inclusive - - - $14,440 50
Extension of the allowances for increase speed, and extra horses and postillions for same time - - 12,420 50
Extension of the allowance for express mail, in the winter of 1834–'5 - - - - 1,800 00

Allowance for extra coaches on the road from Washington to Baltimore 1833–'4 and 5, never before allowed or suspended - - - -	5,080 00
Interest on current pay withheld - - -	6,893 93
	$40,635 93

The award was originally for $162,727 05, but, after the payments were made, the Solicitor informed the Department that he had discovered an error in it of $1,163 16, leaving $39,472 47.

Whatever may be the opinion of Congress as to the jurisdiction of the Solicitor, it is now in their power to withhold, or cause to be paid, the balance of the award. If they think their committees in censuring the allowance to contractors so unanimously, in 1834 and 1835, were so far wrong that the contractors were, in equity and justice, entitled to $161,000 more; if they think that after being paid on the Wheeling route for much service never performed—on the Baltimore and Philadelphia route for two daily lines, and a part of the year, three, when never more than two, and most of the time less than one was actually run; and on the Washington and Baltimore route, for six mails, three years, and five through the fourth year, with allowances for part of the time for extra coaches, when never more than three, and often but two mails, were actually carried, and contractors were bound to carry express mails whenever required; if, after all that has been said about extra allowances, they deem it just and politic to sustain the contractors in attempting to force them on the Department under the administration of the undersigned, to the amount of $26,862, in the year 1835, for services alleged to have been performed without his knowledge, and contrary to his policy and will, and the orders of the Department; if, with all these facts and circumstances before them, Congress think contractors entitled to $39,472 47 more than has now been paid them, they will pass an amendatory act directing payment of the balance of the award. In this event, it is hoped they will also repeal the 17th section of the Post Office law of the last session, which makes the following requirements, viz:

"And be it further enacted that, in all cases where any sum or sums of money have been paid out of the funds of the Post Office Department to any individual or individuals, under pretence that service has been performed therefor, when, in fact, such service has not been performed, or by way of additional allowance for increased service actually rendered, when the additional allowance exceds the sum, which, by the provisions of law, might rightfully have been allowed therefor, and in all other cases when the moneys of the Department have been paid over to any person in consequence of fraudulent representations, or by the mistake, collusion, or misconduct of any officer or clerk of the Department, it shall be the duty of Postmaster General to cause suit to be brought in the name of the United States of America to recover back the same, or the excess, as the case may be, with interest thereon."

This provision was evidently made with reference to the cases re-

ported by the committees of Congress; and, as the current business of the Department has allowed, preparations have been made to carry it into effect. But, if Congress decide it to be equitable and just to pay Messrs. Stockton and Stokes $161,000 more than all the allowances reported upon and considered by the committee, it may be safely stated that there is no case in which even-handed justice would require that this section should be carried into practice.

Its execution, on the part of the Government, would be but the oppression of the weak, while throwing the public funds in immense sums into the lap of the strong.

The undersigned has now accomplished his object of laying before you, in as distinct a manner as he is able, the facts of this case, in which are found the reasons why he thinks the balance of the Solicitor's award ought not to be paid.

If, in doing so, he has used an expression or a word not necessary to the elucidation of truth, which may wound the feelings or injure the reputation of any one, he shall deeply regret it.

Having relieved himself from the obligation to guard the public interests entrusted to his charge, by giving the information in his possession, he commits this paper to your discretion, and the whole case to the disposition of legislative power.

With the highest respect,

Your obedient servant,

AMOS KENDALL.

Exhibit J, referred to in plaintiff's petition, p. 10.

Exhibit J.—Letter from Solicitor to President of United States, in reply to Postmaster General.

Letter from the Solicitor of the Treasury to the President of the United States, in reply to the Postmaster General.

OFFICE OF THE SOLICITOR OF THE TREASURY,
February 7th, 1837.

TO THE PRESIDENT OF THE UNITED STATES:

SIR: I have read, with great attention, the report of the Postmaster General in relation to the award, which it was my duty to make, under the act of July 2d, 1836, for the relief of William B. Stokes and Richard C. Stockton, of Maryland, and Lucius W. Stockton and Daniel Moore, of Pennsylvania, and have to thank *your* justice for the opportunity afforded me of knowing its contents, and making the remarks which I now have the honor respectfully to submit, to be sent to the Senate with that report.

I do not deem it necessary to comment on the preliminary observations of the Postmaster General respecting the action of the several committees of investigation, authorized by Congress, and his declaration that allowances had been made by the late Postmaster Gene-

ral which were not known to the committees, further than to say, that, I am not aware that, as regards the matter in hand, it is of any importance whether all, or any of the claims adjudicated by me, were known to those committees or to Congress. Congress certainly had power to delegate to me authority to adjudicate claims which were never submitted to those committees or themselves. I consider it my duty, therefore, to look to the act constituting me the arbiter between the Post Office Department and the claimants, for the line of my duty, and did not suppose myself at liberty to go beyond its words, as there appeared to my mind no obscurity in them which required elucidation from the history of the times. The words of the act, so far as respects my jurisdiction, are as follows: "That the Solicitor of the Treasury be, and he is hereby, authorized and directed to settle and adjust the claims of William B. Stokes and Richard C. Stockton, of Maryland, and Lucius W. Stockton and Daniel Moore, of Pennsylvania, for extra services performed by them as contractors for carrying the mail, under and by virtue of certain contracts therefor, by them alleged to have been made and entered into with them, by Wm. T. Barry, late Postmaster General of the United States, and for this purpose to enquire into and determine the equity of the claims of them, or any of them, for, or on account of, any contract, or additional contract with the said Postmaster General, on which their pay may have been suspended by the present Postmaster General, and to make them such allowances therefor, as, upon a full examination of all the evidence, may seem right, according to the principles of equity; and that the Postmaster General be, and he is hereby, directed to credit such mail contractors with whatever sum or sums of money, if any, the said Solicitor shall so decide to be due to them, for, and on account of, any such service or contract; and the Solicitor is hereby authorized to take testimony, if he shall judge it to be necessary to do so; and that he report to Congress, at its next session, the law and the facts upon which his decision has been founded."

Notwithstanding the extensive terms of this act, the Postmaster General says, on the third page of his report: "It was believed by the undersigned, and he supposed by every one else, that this act gave the Solicitor authority to examine and adjust, upon equitable principles, those items only which had been allowed by his predecessor and suspended by him, and not to consider and allow claims which had been presented and rejected under the former administration, or such as had never been heard of by the Postmaster General or Congress."

"The Solicitor of the Treasury, however, has construed the law as giving him absolute and uncontrolled power over all new claims which might be presented as growing out of the contracts refered to in the act, and actually awarded the contractors $39,472 49 beyond the full amount of the suspensions. It was thus virtually decided, that the allowances which had been so unananimonsly censured by the committees, were equitable and just; that additional allowances of $122,101 46, never known to the committees, were all of like charac

ter, and that it was equitable and just to make them original allowances of $39,472 47, beyond the utmost liberality of the former Postmaster General."

"The undersigned differed widely from the Solicitor, in reference to the equity and justice of these claims in general. He was as fully satified as the human mind can be, that the contractors were not entitled to $20,000 of the $161,000 so awarded. But Congress had taken from him all power over the subject, as far as they gave jurisdiction to the Solicitor, by peremptorily requiring him to pay whatever that officer might award within that limit. As far, therefore, as the jurisdiction of the Solicitor extended, the undersigned could not refuse to pay, without a direct and palpable disregard of the requirements of the law. But it was considered by him equally his duty to refuse to pay any sums which the Solicitor, through an erroneous view of his legal authority, might think proper to allow, until such payment should be required, or authorized by further legislation. Believing that the Solicitor had no jurisdiction to consider and allow any claim beyond those which had been suspended, before the act of Congress passed, he refused to pay $39,472 47,* allowed by him, over and above those claims. The reasons on which his construction of the law *are* based will be more fully given hereafter."

"The contractors memorialized the Senate, with a view of obtaining payment of this new allowance, and their memorial was referred to the Committee on the Judiciary, who have considered the case and made a report to the Senate."

"The undersigned felt no responsibility to the country, in paying the $122,101 46, awarded under the act of the last session, because it was required of him by other public agents, to whom had been delegated the power to control him in such matters. Nor did he think, at the last session of Congress, that he was called on to volunteer information as to the nature of the claims, because the proposition was merely to submit them to the arbitrament of an equitable tribunal, which, it was presumed, would make full inquiry into their character and merits. But his attitude is now changed. He thinks that the Solicitor, from an erroneous view of the facts and the law, has awarded the contractors $40,635 93, beyond the whole amount he had authority to consider, no part of which is due to them in law or equity."

From the foregoing extracts, it appears that the Postmaster General denies any jurisdiction over all claims of Stockton & Stokes for services under contracts with the late Postmaster General, on which their pay had suspended by the present Postmaster General, unless all the items had been presented to, and suspended by him, that is to say, from the period when pay was suspended, the 1st of April, 1835, and that at which the contracts expired, the 31st December, 1835.

He also enters into an examination of the facts, respecting which I was constituted the arbiter between him and the claimants by Congress, and positively asserts that services for which awards have been

* This sum was originally $40,635, and over, but has been reduced by the discovery of an error by the Solicitor."

made by me, both before and after the 1st of April, 1835, never were performed.

I shall consider, first in order, the question of jurisdiction. For, whether the services denied by the Postmaster General were performed or not, is a matter of no moment, if it be denied that the claims for those services did not come within my jurisdiction.

In order to a right understanding of this question, it is proper to consider in what points the Postmaster General and myself agree, and in what we differ.

The Postmaster General says, "two things are necessary to give him (the Solicitor,) any jurisdiction whatever," viz:

1st. A contract by W. T. Barry, late Postmaster General.

2d. A suspension of pay upon contract by the present Postmaster General.

In these two positions I agree with the Postmaster General. But that high officer, adopting the censures upon his predecessor, pronounced by the committees of Congress, appears to think that the reports of those committees should be taken into consideration, with a view to throw light upon the construction of the act and my action under it, though he expressly states in another part of his report that the claims submitted by Congress to my adjudication were never before those committees, or known to them or Congress.

In these last particulars I differ from the Postmaster General. I neither concur with, nor dissent from, the opinions of the committees of investigation. I pronounce no adjudgement upon their conduct, and am perfectly sure that they could not have intended, in anticipation, to pronounce censure upon me for allowing claims respecting which, according to the Postmaster General's own showing, they were entirely uninformed.

Neither can I agree with the Postmaster General, who is so strict a constructionist, whenever my powers, for the satisfaction of justice withheld, may take money from the surplus fund of his Department, in thinking that I have a right to save that fund by drawing within the scope of my jurisdiction, at one wide sweep, all the claims heretofore settled, in his Department, with Messrs. Stockton & Stokes, in order to determine whether too much or too little has been paid for services rendered, or whether payment has been made for services never performed, with a view to make a deduction from the compensation of services specifically submitted to my decision. Indeed, it was with surprise, approaching astonishment, that I discovered, in some of his letters to this office, as well as in his report to you, that a man of his reputed precision of mind could entertain, for a moment, so loose an idea.

To conclude these preliminary remarks, made with a view to clearness in the free examination in detail, which I am obliged to make, I do not think I am possessed of jurisdiction over any thing that was not the subject of a contract with the late Postmaster General, and on which contract the pay of the contractors has been suspended by the present Postmaster General.

The present Postmaster General, as will be seen by a reference to

the account rendered by the Department to the contractors, and marked exhibit No. 31, among the documents transmitted with my report to Congress, has suspended from credit five classes of allowances, viz:

1. For increased expedition.
2. For extra horses and postillions.
3. Increased weight of mails.
4. Additional daily line from Baltimore to Philadelphia, and Baltimore to Washington.
5. Extra mails, &c.

Now, I admit I am in error, if I have made an award for any claims that do not come within one or the other of these classes.

But, even in these cases, the Postmaster General denies me jurisdiction beyond the 1st April, 1835. This question, then, shall first be considered.

The act directs the Solicitor "to inquire into, and determine the equity of the claims of them," (the contractors,) "or any of them, for, or on account of, any contract, or additional contract, with the said Postmaster General, *on which their pay may have been suspended by the present Postmaster General.*"

Now, the contracts in question expired on the 31st December, 1835, and I was, and still am, of opinion, (in which I am sustained by the Attorney General, and the Judiciary Committee of the Senate,) that the limitation intended by these words, *on which their pay may have been supended by the present Postmaster General*, refers to the word "*contract*," and does not exclude any claim whatsoever, for services, either before or after the 1st of April, 1835, provided they were performed in pursuance of such contracts. I think the structure of the English language requires this construction. We say, and with propriety, "pay has been suspended on a contract," but we do not say, "pay has been suspended on a claim;" the proper phraseology would be, "the payment *of a claim* has been suspended." The Postmaster General appears to think, nevertheless, that the limitation of jurisdiction has reference to the word "claims" and that it excludes all claims for services subsequent to 1st of April.

Suppose, then, that we admit that the words of limitation refer to "claims," instead of "contracts," still may not a service rendered after the 1st of April, 1835, be paid for? What are the claims which Messrs. Stockton & Stokes, in the case of increased expedition and extra horses and postilions, prefer? They are for services which they allege, and have proved, to my satisfaction, to have extended from the 1st of January, 1834, to the 31st of December, 1835, although the pay of the contractors "on these claims," if we must allow that to be the construction of the sentence, may have been made quarterly, according to regulation, up to the 1st April, 1835, yet the claims are unbroken and continuous, from the 1st January, 1834, to December 31st, 1835; and, therefore, it may, with propriety, be said, that pay has been suspended on them by the present Postmaster General, and are, therefore, within my jurisdiction. Although this suspension of payment took place on the 1st of April, yet the claim

comes within that suspension, whether the services were performed before or after the 1st April.

My first award, therefore, proof being exhibited of the services having been continued to the 31st December, 1835, gave compensation up to that day. Whereupon, the Postmaster General addressed to me the letter, marked A, and bearing date the 24th September, and inquiring "upon what ground I thought the law gave me power to allow claims which had never, before the passage of the late act, been presented or suspended at the Department."

In my answer, of the 27th September, 1836, marked B, I referred the Postmaster General to the words of the act, as the best answer I could give to his inquiry, and, moreover, marked, as follows: "The direction of the act appears to me perfectly plain. It is, that I am to make an equitable allowance for extra services, under contracts made with Mr. Barry, on which the pay of the contractors had been suspended by you. I understand by the term, "the services," all services rendered under those contracts, as I find no expression in the act limiting my authority to a part."

"The contractors have exhibited proofs, which were not before you, that the extra services, in question, were continued until the 31st December, 1835, when the contracts expired, and made their claims accordingly. After examing the testimony laid before me by the contractors, as to the reasonableness of the allowances made by Mr. Barry, I considered them equitable. But before making up my decision, supposing you had the power to dispense with the extra services required by him, I inquired, in my letter of the 23d inst., whether any notification was given to the contractors that these services might be continued after the 1st of April, when their pay was suspended;" and received for answer from you, "that not considering the services for which the allowances, by the late Postmaster General, were suspended in the account of Messrs. Stockton, or Mr. R. C. Stockton, on the routes from Baltimore and Washington to Wheeling, as ever legally authorized, the Department has given no notification to those gentlemen to discontinue those services, other than declining to pay them on the grounds stated in the paper now before you."

Messrs. Stockton and Stokes claim that these contracts were legal and that they had acquired rights under them. You, under a conviction of duty, decided that they were illegal and suspend their pay, but do not direct them to discontinue the services, [and] they continue them to December 31st, 1835. They do not, after your decision, look to the Department for compensation, but appeal to Congress; and Congress recognizes those contracts so far as to direct me to settle their claims under them, upon principles of equity; and as those contracts, thus recognized, did not expire until the 31st December, 1835, I allowed compensation until that period, as I did not, and do not now, find any provision in the act, limiting compensation to the period at which you suspend the pay of the contractors."

As the Postmaster General denies the performance of services by

the contractors, I then withdrew my award, and requested him, if he had any proofs in his Department, of the non-performance of the services for which an allowance had been made, to forward them to my office.

On the 29th, he sent me sundry schedules and other documents, and addressed me an answer marked C, in which, after a few observations on the construction of the act, to be derived from its terms, he enters upon a long argument on the facts, to which I shall hereafter have occasion to revert, when I come to consider the proofs on which my awards were founded

This letter did not change my opinion as to the construction of the law; and so clear was my conviction, that I had given the true construction to it, that I hesitated for some time, whether I should refer the question of jurisdiction to the Attorney General, or not, more especially as he was then absent from the city. My respect, however, for the intellect of the Postmaster General, at length induced me to do it, and I wrote the Attorney General, (then in New York,) the following letter, on the 12th October, 1336, marked D.

Sir: "At their last session, Congress passed an act for the relief of Wm. B. Stokes, Richard C. Stockton, Lucius W. Stockton, and Daniel Moore, on the construction of one point of which, I must ask the favor of your opinion. I would not have troubled you with this application until your return to the seat of Government, but Messrs. Stockton and Stokes represent their pecuniary situation to be such as to compel them to solicit, with much earnestness, an early decision on the claims; and I, also, am desirous to get through with the very unpleasant duty assigned to me by the act, as soon as possible. I will be obliged if you can favor me with an early reply."

The act provides "that the Solicitor of the Treasury be, and he is hereby authorized and directed, to settle and adjust the claims of William B. Stokes and Richard C. Stockton, of Maryland, and Lucius W. Stockton and Daniel Moore, of Pennsylvania, for services performed by them as contractors for carrying the mail, under and by virtue of certain contracts therefor, by them alleged to have been made, and entered into with them by Wm. T. Barry, late Postmaster General of the United States; and for this purpose, to enquire into, and determine the equity of the claims of them, or any of them, for, or on account of, any contract or additional contract, with the said Postmaster General, on which their pay may have been suspended by the present Postmaster General, and to make them such allowances therefor, as, upon a full examination of all the evidence, may seem right, according to the principles of equity."

"The suspension of pay under the contracts with the late Postmaster General, Barry, took place under the direction of the present Postmaster General, on the 1st of April, 1835; and the contracts themselves, being decided to be unauthorized by law, the contractors presented no accounts arising under them for settlement at the Post Office Department, after that decision; but, considering these contracts as recognized by Congress, so far as to allow them equitable compensation for services performed under them, they have presented

claims to me for extra services, which they allege to have been performed under them, until the 31st December, 1835. The equity of the claims from the 1st of April, to the 31st December, 1835, when the contracts in question would necessarily have ended, being additional to contracts which expired on the 31st December, 1835, must, of course, depend upon the evidence which may be exhibited. With this, especially as it is not all yet taken, I do not mean to trouble you, but the question I desire to have solved is, whether I have jurisdiction, under the act, of any claims which may be presented for services alleged to have been rendered between 1st of April and the 31st December, 1835."

"My impressions, derived from conversations during the late session, in which I expressed a desire, before the passage of the act, that Congress would not devolve upon me duties which appeared to me to be incongruous with the nature of my office, and duties too of a very unpleasant, as well as highly responsible character, were, that the object of the act was to put an end to all further application to them by appoining a tribunal to pass, finally, upon the equity of all the claims in dispute. On reading the act, however, I found that the claims, under certain contracts specified therein, were excepted. To these I have no occasion to call your attention. But the act, as you will perceive from the above quotation from it, directs me to enquire into, and determine the equity of the claims of them" (Messrs. Stockton and Stokes,) "for, or on account of, any contract, or additional contract, with the said Postmaster General, (the late Wm. T. Barry,) "*on which their pay may have been suspended by the present Postmaster General.*" The words underscored, I supposed were intended to specify *the contracts*, the claims under which I was directed to settle, and to exclude my action on any claims which did not arise under *contracts*, on which the pay of the contractors had been suspended; but I still supposed that it had been my duty to enquire into, and determine the equity of, *all claims* that should be made under such contracts, whether for extra services rendered before or after the 1st of April, 1835. If reference had been intended by the words of limitation "to claims" and not to "contracts," the appropriate expression would seem to be "the payment of which may have been suspended," instead of the words used in the act "*on which their pay* may have been suspended."

"Upon these words of limitation, whether referring to the word "claims" or the word "contracts" will depend, I presume, whether I have, under the act, jurisdiction of claims, arising from the contracts in question, for service between the 1st April and the 31st of December, 1835."

"Though my mind still inclines to the opinion above indicated, as to the construction of the act and the extent of my jurisdiction, yet some doubt has been excited on the subject, and wishing, in so responsible and painful a duty, not to extend my power one inch beyond the law imposing, I have asked your aid to solve that doubt. It is my duty to fulfil the intention of Congress, and if your opinion confirm the bias of my own judgment, that the act requires me to

consider and decide upon *all claims* under the contracts in question, whether for services before the 1st of April, 1835, or between that day and the 31st December, following, I shall not shrink from the performance of that duty because it is accompanied with heavy responsibility."

To my letter the Attorney General made the following reply, on the 31st October, 1836, confirming my construction of the act:

"SIR: I have had the honor to receive your communication of the 12th inst., and have given to the act of the 2d of July last, "for the relief of W. B. Stokes, Richard C. Stockton, Lucius W. Stockton, and Daniel Moore," as deliberate and mature a consideration as I have deemed necessary to the decision of the question proposed to me by you.

In my judgment, the act authorizes and directs you to enquire into, and determine the equity of, all claims, made by the persons named, or any of them, for, or on account of, any contract, or additional contract, for carrying the mail, alleged by the claimants to have been made and entered into with them by William T. Barry, late Postmaster General, and on which contracts the pay of the claimants have been suspended by the present Postmaster General, whether such claims are for services alleged to have been performed *before* or *after* the time when the pay was suspended. To apply my understanding of the law distinctly to your question, I think you have jurisdiction, under the act, of any claims which may be presented for services alleged to have been rendered between the 1st April and the 31st of December, 1835, for, or on account of, any such *contract* as is described in the act."

Such is my letter, and such the Attorney General's opinion.

The Postmaster General has thought proper to allude to my reference to the Attorney General for his opinion and his answer, in the following terms:

"Before the undersigned enters upon the consideration of the legal authority of the Solicitor to consider and allow other claims than those suspended, he deems it necessary to advert to the proceedings between the Department and that officer while the case was pending. On first receiving the Solicitor's award, in part, the undersigned expressed his surprise to him, by letter, at the construction he had given to the law. After some discussion, the award was withdrawn with the view, as was supposed, that it might be reviewed and corrected. Some days afterwards a letter was received from the Solicitor enclosing a very brief opinion of the Attorney General, declaring, in *general terms*, that he thought the Solicitor had jurisdiction of *other claims* than those suspended. *Being sure, from the tenor of the opinion, that the specified points in issue had not been stated to the Attorney General*, the undersigned inquired of him, and learnt that neither the views of the Department nor even the fact that any difference of opinion had arisen between the Solicitor and its head, had been communicated to him. On being asked whether his opinion was so clear that a history of the act, and a specific statement of the points and principles involved might not change it, he replied *that it was not*;

the opinion given having been formed upon a cursory examination of the acts without a case presented. As the opinion of the undersigned was formed, and clear, he had no motive to trouble the Attorney General with a view of the case, and now alludes to the subject only to show how much importance is due to that opinion *thus elicited.*"

The Postmaster General takes exception to my not apprising the Attorney General of the fact of the difference of opinion between himself and myself, and to my not having "*specified the points in issue.*"

To this exception I have a very simple reply, and that is, that I could not possibly conceive it to be of the slightest consequence whether I informed the Attorney General of the difference of opinion between the Postmaster General and myself, or not. It could have no bearing upon the right construction of the act as to the only point upon which I desired the opinion of the Attorney General; and I do not suppose that a knowledge of that difference of opinion could have had the smallest influence upon the construction of an act of Congress, by any lawyer having the slightest regard to professional reputation, much less with a man of the distinguished learning and high character for talent and integrity of the Attorney General. My only motive for not making it known, as the Attorney General was then in New York, was to save the trouble of writing what was altogether unnecessary; and, as the Attorney General returned to Washington before he answered my letter, if I did not mention the difference of opinion between the Postmaster General and myself, it was altogether accidental, for I certainly had no motive to conceal it from him; and, as the Postmaster General thinks it of importance, I regret I did not lay before the Attorney General the letter, though it was principally occupied by a discussion of the facts, the responsibility of deciding upon which I had no disposition to put off (indeed I had no right to do it) from my shoulders to his. But as to the omission of a statement specifying the points in issue, "or stating a case" which presented the only point on which I desired his opinion, I fearlessly appeal to the Attorney General, as I now most respectfully do to yourself, to examine the whole of my letter above recited, and particularly that paragraph which commences with the words "suspension of pay," and ends with the words "31st December, 1835," in which, *the case is stated* as connected with the construction of the act on which I desired his opinion, and then to decide whether I could have put my question more fairly or more directly, explicitly, and clearly. Nor could the Attorney General, after saying he had given the act "as deliberate and mature a consideration as he deemed necessary to a decision of the question proposed to him by me," have called out of the English language words which could more clearly give his opinion, that my jurisdiction extended to all claims of Messrs. Stockton and Stokes for services under contracts with his predecessor, in which their pay had been suspended by the present Postmaster General, whether those services were performed before or after the 1st of April; and yet this gentleman, with respect to this opinion so perfectly clear, positive, precise, and distinct, says, in his report to you, that the Attorney General had declared, "*in general terms,*" that he thought the

Solicitor had jurisdiction of *other claims* than those suspended; and alleges that that high officer had said, in conversation with him, that he had given his opinion upon a "*cursory examination of the act, without a case stated*," and feels at liberty, with respect to the manner in which I had asked that opinion, to make a disreputable imputation of unfairness in it, with a view to affect the answer; and charges me, moreover, with the heinous offence of not making known the views of the Department, nor even the fact, so necessary to enlighten the Attorney General in the true construction of an act of Congress, that a "difference of opinion had arisen between the Solicitor and its head."

Having laid before you the opinion of the Attorney General, I will further occupy your valuable time on the subject of jurisdiction only to present to you, as the Postmaster General has altogether omitted to do in his report, the remarks on this point of the Senate Judiciary Committee, to whom was referred the petition of Messrs. Stockton and Stokes, respecting the refusal of the Postmaster General to pay them the sum awarded.

"The committee say: "From this view of the act of the last session, the committee did not deem it proper to go into the examination of the claims decided upon by the Solicitor, except so far as to ascertain whether the claims adjudicated upon were submitted to his decision by the "act for the relief of Wm. B. Stokes, Richard C. Stockton, Lucius W. Stockton, and Daniel Moore, approved 2d July, 1836." Upon this branch of the subject the attention of the committee has been principally directed to the just construction of the language of that part of the act conferring upon the Solicitor his powers. The Solicitor is "directed to inquire into and determine the equity of the claim of them, or any of them, for, or on account of, any contract with the said Postmaster General, on which their pay may have been suspended by the present Postmaster General; and to make them such allowances therefor, as upon a full examination of all the evidence, may seem right according to the principles of equity," &c.

"By the expressions here employed, it seems to this committee that two things are only requisite to give power or jurisdiction to the Solicitor."

"1st. That the claims presented should be for, or on account of, contracts made with the late Postmaster General."

"2d. That the present Postmaster General shall have suspended the pay. The committee have not discovered that any allowance has been made by the Solicitor, except in cases falling within his jurisdiction, when tested by these restrictions. It is true he has allowed compensation for services adjudged by him to have been rendered by the petitioners since the late Postmaster General retired from office; still these claims were on account of contracts made by him; and the act of Congress plainly submits to the adjudication of the Solicitor all such cases, without any reference to the time when the services were rendered; and it cannot be believed that the time when the services were rendered, or the claims fell due, was deemed anywise material by Congress, or some expressions restricting the powers of the Soli-

citor, would have been introduced into the act; besides, the act directing the Solicitor to settle the accounts, passed after the expiration of all the contracts, and after the rendition of all the services which may have been performed under them; from which facts, in connexion with the broad and comprehensive language of the act, it may fairly be inferred as the intention of Congress that the whole claims for services under the contracts specified in the act, were to be adjusted and settled by the Solicitor, without regard to the time when the services were performed; and further, that a suspension of any portion of the pay, even for a single quarter, upon such contract, by the present Postmaster General, authorized the Solicitor to investigate all the claims of the petitioners under such contract."

After presenting you with this full and explicit opinion of the Committee on the Judiciary, composed as it is of learned and able lawyers, in addition to that of the Attorney General, both of which confirm my own in every particular, as it respects my jurisdiction, I should consider it a work of supererogation to examine further the objections of the Postmaster General.

The Postmaster General, however, is not content with disputing my jurisdiction, and declining the positive duty enjoined upon him by the act of Congress, notwithstanding the explicit opinions of the Attorney General, and the committee of Congress who reported the act, and who certainly knew what jurisdiction they intended to give, but he goes further, and in defiance of the act of Congress, which assigned to me (much against my wish) the full and final adjudication of the facts, he now makes himself not only a party in the controversy submitted to my adjudication, but, party as he has made himself, erects himself into a court of review of that adjudication, though Congress, by directing my report to be made to them, clearly indicated that my responsibility was to that body, and not to the Postmaster General.

The Postmaster General denies that the services for which I have awarded equitable compensation were performed; and after making this denial, and unsparingly denouncing to the appointing power of the Government, without any notice to me, the action of this office, he enters into an argument to prove the justice of that denunciation *upon the strength* of official assertion of facts, without noticing the reasons assigned in my report to Congress, or the proofs on oath on which it was founded, although, as a difference of opinion existed between us, I had frankly laid the whole before *him*.

As the inference from his report to you would necessarily be, that the awards I had made were utterly without reason, and that the Treasury had been opened without proof of claims, I am under the painful necessity, having answered his objections on the score of jurisdiction, of replying to his report, and of making a full exhibition of his official assertions in contrast with the proofs, under oath, exhibited to me. In doing this I must make liberal quotations from my report.

In my report, I say "that the claims first presented were made for extra services performed on the route from Washington and Baltimore to Wheeling, being numbered 1,201, 1,389, and 1,390. They were—

1st. For increased expedition;
2d. For extra horses and postillions; and
3d. For increased weight of mails.

I shall consider these three claims in the order in which they are stated.

And first, for increased expedition:

By the proposal advertised until the 26th September, 1831, for carrying the mails daily between Baltimore and Wheeling, from 1st January, 1832, to 31st December, 1835, in four-horse post coaches, three days and three hours were allowed for going out, and three days and 1 and ½ hour returning.

By a contract bearing date the 13th October, 1831, Richard C. Stockton and William Neil bind themselves to carry the mail according to the above proposal, for a sum which is ascertained by an apportionment between the routes in question and the other routes contracted for, to be - - - $4,550 00

They bound themselves also, if required by the Postmaster General, to carry a daily mail in 2½ days, and to run also a tri-weekly line, to carry the way mail for the additional compensation - - - 8,950 00

But, in consequence of the solicitation of a number of members of Congress, they propose an increase of speed on sundry routes, by a letter of the 23d of December, 1831, for the annual compensation of - 15,988 00

Of which the portion for the routes from Baltimore and Washington to Wheeling, on which they were to carry the mail in two days in summer and 2½ in winter, was, per annum - - - - - 6,750 00

Or, $1,687 50 per quarter. The late Postmaster General accepted this offer, and ordered the service on the 1st January, 1832.

"This increased speed was accomplished in the time stipulated, until it was rendered impossible by the breaking up of the National road for repair by the Government, when the Postmaster General allowed from six to twelve additional hours, without intending to diminish the contractors pay, but merely to make an allowance in respect of time equivalent to the delay occasioned by the obstructions thus created by the Government itself. This is proved by the depositions of the hon. Andrew Stewart, of Pennsylvania, and the Rev. O. B. Brown, then superintendent of mail contracts. The former, in his affidavit, marked exhibit No. 3, says, "I furthermore certify, that great obstacles were interposed by the agents of the Government in taking up and repairing the Cumberland road—so much so as to render it utterly impossible to effect, with any force, the transportation of the mail over in stages with the required speed—first, by taking up the old bed and covering the surface with large loose rocks and stone; and afterwards, when repaired, in placing logs, stumps, brush, and other stones, on the alternate sides of the road at short distances, varying from forty to eighty feet apart, so as to force the carriages to run zig-zag across the road to prevent the cutting it into ruts, and to

pack the stone evenly. This rendered it impossible to drive rapidly without hazarding the lives of the passengers and the security of mail stages, at all times, especially after night. These difficulties were represented to the Department by myself and others, and an order was made, in consequence, extending the time allowed, I believed, about twelve hours. This I considered at the time, and now consider, altogether inadequate to the unavoidable loss of time occasioned by the obstructions placed in the way of the mail by the acts and agents of the Government, and compelled the contractors to increase the speed on other portions of the road where those obstructions did not exist, to make up the time lost after the order giving the twelve hours additional. These facts came under my personal knowledge and observation, in frequently passing the road in the stages and otherwise at the time."

Mr. Brown, in his deposition, marked No. 4, says, "that in the contract of R. C. Stockton & Co. for transporting the mail between Baltimore and Washington city, and Wheeling via Frederick and Cumberland, and on the National road, the contractors, for certain allowances of compensation, obligated themselves, from January 1st, 1832, to run the mail through in two days in summer, and in two and a half days in winter, from Baltimore to Wheeling; four days from Baltimore to Cincinnati in summer, and four and a half days in winter; that whilst they were performing the service at this rate, it was shown to the Post Office Department that the Government itself, through the War Department, had broken up a part of the road for the purpose of making repairs on the same, by means of which it became impracticable, without immense loss and danger, to run in that time, and that the contractors, in essaying to keep the full speed, had broken and destroyed several coaches, and put in jeopardy the lives of the passengers and drivers; that the Postmaster General, in consideration of the obstruction having been occasioned by the Government itself, conceived it but equitable on the part of the Department to allow the contractors so much time beyond the two and two and a half days, as to enable them to carry the mail through with the same labor and expense that would have been required for performing the service in two and two and a half days, if the obstructions had not existed. With this view the time was extended—to what period I do not recollect—but several hours additional time were allowed. I believe from six to twelve hours. This additional time I know to have been allowed purely on account of the obstructions which the Government had occasioned, and it was intended to be no more than equivalent to the delays which such obstructions necessarily occasioned. The Postmaster General so expressed it to me at the time, and never intimated an intention or thought of diminishing their compensation on account of it."

The concurring testimony of both these gentlemen is confirmed by the schedules, which extend the time at various periods between the 22d December, 1832, and the 31st December, 1835, from six to thirteen hours beyond the two and two and a half days, which were called the *increased* speed for winter and summer.

I have been more particular in quoting the testimony on this point at large, because the time of the "*increased speed*" being thus prolonged, it has been confounded with the "*improved speed*" proposed in the original bid, and inserted in the contract (exhibit No. 1) which was two and a half days for the transportation of the mail between Baltimore and Wheeling, and it has, in consequence it is presumed, been alleged that the "*increased speed*" was not continued after the year 1833, because, after that year, no speed greater than the two and a half days between Baltimore and Wheeling was required by the schedules, which was the improved speed proposed in the original contract. But it has appeared to me that the same equitable considerations which induced the late Postmaster General to add twelve hours to the time of "*increased speed*," would, if the proposition of December, 1831, had never been made, have induced him to allow twelve additional hours for the "improved speed," making it three days instead of two and a half. I have, therefore, considered the time of two days and six hours, and two and a half days in summer, and two days and nineteen hours or three days in winter, in which the mail was carried at different periods after the road was broken up between Baltimore and Wheeling, as "increased speed" within the equity of the stipulation of December 23, 1831."

If any more testimony were wanting to show that increased speed, by agreement with the Department, was two and a half and three days, or nearly so, in summer and winter, after the 3d of October, it is furnished by the acknowledgment of the Postmaster General himself, who, in his report, says:

"In September of that year the contractors produced proofs, that in consequence of the Cumberland road being broken up for repairs, it was scarcely possible and not at all safe to run at the speed of two days. In consequence of which they were, on the 3d October, 1832, allowed two and a half days each way; and, on the 22d December, they were allowed two days and nineteen hours going out, and two days twenty hours returning."

The schedules, after this time, conformed to the increased speed thus extended by agreement of the Department, as an equivalent for the delay occasioned by the breaking up of the National road for repairs; and instead of serving for proof (as the Postmaster General contends) that no increased speed was performed by the contractors after the 3d October, 1832, they, on the contrary, prove that increased speed, in the meaning of the parties, was performed throughout the whole time claimed, from the 1st January, 1834, to the 31st December, 1835, and thus the whole reasoning of the Postmaster General, divided from the schedules, falls to the ground.

The Postmaster General says that "it appears from the books and files of this Department, that from the first of January, 1832, to about the 1st of May of that year, none of the improved service was performed, the mail being carried through in a daily line occupying about three days in the passage as under the old contract."

I notice this charge of want of performance, merely because it was introduced to show the exorbitancy of my awards. With this view

of the subject, all that is necessary for me to say is, that I have made no award for this service. No claim for these services was made by the contractors. The suspension of pay, made by the present Postmaster General, went back only to the 1st of January, 1834, and the account of the contractors with the Department furnished by him, gave them credit for these services up to that time.

For this reason, I pass over all the other remarks of the Postmaster General, as having no bearing upon my *awards* until he comes down to the 18th November, 1833, when an order of the Department retrenching the allowances of increased expedition, and extra horses and postillions was made, to take effect from the 1st December, 1833.

The Postmaster General states that the services thus retrenched were never restored afterwards, nor performed ; and, in proof of this, refers to the deposition of Major Hobie, assistant Postmaster General, and Mr. Suter, pay clerk, who stated that Maj. Barry, about a year and a half after the restoration of the allowances, as claimed by the contractors, said that he did not intend to restore the allowances retrenched in November, 1833.

But the following depositions as to what Mr. Barry said *at the time of making the restorations*, and his own letter prove conclusively, that there has been some misapprehension of what Mr. Barry said, or that his own memory was defective, and show that a *restoration was actually made.*

A deposition of the Hon. Andrew Stewart of Pennsylvania, late a member of Congress, who, in a certificate sworn to by him, says :

"I certify that shortly after the order of the Post Office Department, suspending or discontinuing the increased speed, postillions, and second line, on the line from Washington and Baltimore to Wheeling, I had an interview with the late Postmaster General, Mr. Barry, on the subject, in which, I remonstrated against the order, and represented the importance of continuing the speed and other facilities, on this most important line of communication to the west. He concurred in my views, explained the causes which produced the order, and concluded by saying they should be restored, and especially if such was the desire (as I suppose it to be) of the western members of Congress generally. Some time afterwards I again called and presented him a letter, signed by some twenty or thirty members, urging the continuance of the facilities, and the pay of the same. He then said distinctly that it should be done ; that the speed postillions, and second line, on this route, with the compensation, should be continued, and that I might *so inform the contractors, which I did accordingly.* I mentioned that at my suggestion, and perhaps some others, the contractors had never intermitted the speed, the employment of postillions, and so forth, in consequence of the suspension, and that the compensation ought not to be affected by the order. He said it should not. I afterwards got a number of other names to the letter, which increased the number of members, to between seventy and eighty, which I believe was filed in the office as evidence to justify the Department in the restoration and continuance of the facilities and speed above mentioned on this route."

The promise and order of the Postmaster General was positive and distinct, that they should be restored; that they should not be affected by the order of suspension or discontinuance, and that *he authorized me to so inform the contractors, which I did.*"

The next proof, to the point under consideration, is the copy of a letter from Maj. Thomas D. Carneal to the Hon. Amos Kendall, to which is annexed his oath before a magistrate, and is as follows:

BALTIMORE, *May 2d*, 1835.

"SIR: In December, 1833, on my way from the west to Philadelphia, Mr. Stockton of Uniontown, made known to me that the Postmaster General had suspended the extra allowance on that route; that, owing to the increased weight of the mails, the contractors could not, without ruin to them, continue the extra line or teams, and extra postillions, placed on the route, then necessary to transport the mails. Having noticed between Wheeling and that place the great weight of mails, I advised Mr. Stockton to continue the extra teams, and postillion horses, until a full representation of the facts could be made to the Department, and a decision had as to the restoration of the order made, placing, or rather requiring, the extra teams, &c. on the route. As an inducement for Mr. Stockton to adopt the advice given, I promised him that, on my arrival in Washington, I would make a full and fair representation of the facts, and immediately apprise Mr. R. Stockton, of this city, of the result. At once he determined to adopt my advice, and let no exertion on his part be wanting on the ground of expense, until a decision could be had."

"I reached Washington about the 10th January, and, on the next day after my arrival, made known to Maj. Barry the peculiar hardship and difficulties the contractors on that route had to contend against. He admitted the fact, but hesitated as to the power of the Department to grant the relief. After much conversation on this subject, he referred to Maj. Hobbie, who was called in, and to whom I was introduced by him, and the substance of the conversation had between us, was made known to him. With Maj. Hobbie, I had several interviews, and was shown by him a recommendatory letter, from sixty or seventy members of Congress, urging upon the Department the restoration. To aid me in this, I called in Col. R. M. Johnson, and Major Eaton. We met at the room of the Postmaster General, and the subject was taken up, fully discussed, and resulted in the restoration of the original order making the extra requisition, with the allowances then paid by the Department for such extra service prior to the suspension order.

I am &c.,

(Signed) THOMAS D. CARNEAL

HON. AMOS KENDALL, *P. M. G.*

Sworn to before

RICH'D SIMMS, *J. P.*

The next document is the deposition of the Rev. O. B. Brown, chief clerk of Mr. Barry, who, from his official situation, would be more likely to be acquainted with his views, intentions, and acts, than any other person. As the deposition contains other matters, I submit at present that part of it only which relates to the restoration of the allowances retrenched. The extract is as follows, viz:

"Towards the close of 1833, the Postmaster General directed a great many retrenchments to be made in mail routes which would diminish the pay of contractors. The retrenchment of service was to take place from the 1st December, 1833, and of pay from the 1st January, 1834. Among those, this route of Stockton & Co. was to undergo some retrenchment, but to what amount I do not distinctly recollect. Soon after this order was given, the Postmaster General expressed to me great reluctance to interrupt the progress of this great western mail, as it would cause much excitement; and he added a wish that they might continue the service, and stated that if they did so he would pay them for it. He appeared to be much concerned for this route, and always showed more than ordinary feeling when speaking of it, as he regarded it as the great artery of circulation for all the great West. Soon after this, I do not recollect the time, but I believe it was in the beginning of January, 1834, he told me that he had determined to restore the whole of what had been retrenched on this route, and expressed great satisfaction to learn that the contractors were continuing the service. He remarked that it was a very delicate subject, for, if it should be known that he had restored one route, he should be borne down with applicatinos from every part of the Union. But that the public mind evidently called loudly for this restoration, and he had determined to make it, and wished to do it in such a way as would be least likely to be known to others. I do not pretend to repeat his words; but such was the substance of his remarks. As it did not then belong to my division of the duties of the Department, I did not make any enquiries further on the subject. What he said to me on this subject was purely spontaneous, and without any inquiries on my part. He observed that many Members of Congress had made strong applications for the restoration, and that from the representations made, there appeared to be very extensive feeling on the subject, which made it his duty to grant the restoration of the allowances which had been retrenched."

The last document is a letter written by Maj. Barry himself, to Mr. Stockton, the 2d February, 1834, and is in the following words, viz:

"My Dear Sir:" I have received yours of the 31st. It was intended to direct you to continue improvements already on the road to Wheeling as indispensible. The form of the order does not perhaps meet the case, and it will be important for you to be present when it is done; but this need not hasten your visit to Washington, to the neglect of other important engagements, and can be finally adjusted hereafter. I would say more, but the subject is a delicate one that

can better be arranged by personal converse. Be assured of my disposition to do what is just and liberal.

Yours very sincerely,

(Signed) W. T. BARRY.

R. C. STOCKTON, Esq., *Baltimore.*
2d February, 1834.

These documents, which relate both to increased speed and extra horses and postillions, left no doubt on my mind that the allowances retrenched in the fall of 1833, were restored; that the restoration was communicated by the authority of the late Postmaster General, to the contractors, and induced them to continue the services, which they, in consequence of the expectation of their restoration, had, in fact, never intermitted, while the retrenchment was actually in force.

But the Postmaster General *asserts*, that the allowances retrenched were not only not restored, but the service not performed, either before or after April 1, 1835.

That they were restored has been already *fully proved*, by the oaths of Mr. Stewart, Major Corneal, the Rev. O. B. Brown, and a letter in the hand-writing of Mr. Barry himself, which have been copied on the foregoing sheets; and that the services were continued from the 1st January, 1834, to the 31st December, 1835, is established beyond controversy, by the oaths of no less than seven witnesses, viz: George S. Evans, James P. Carleton, James Workman, William Hart, R. L. Barry, and David Moreland, and the certificates of nineteen other witnesses, to wit: J. C. Simpson. Andrew Stewart, Matthew Allen, Thos. Sloan, Sam. Evans, John Campbell, Jno. A. Langston Henry Bevans, Wm. McMillen, R. Banting, Jas. Stoddart, jr., Thos. Thistle, James Stoddart, James Black, J. Huddleston, Jas. C. Wright, W. Thornbury, John Kelly, and James Workman. All these persons above named are postmasters and tavern keepers, and other reputable residents on the National road, and, of course, occupying the very situations which best quallified them to be exact witnesses; and their depositions and certificates were laid by me before the Postmaster General, that he might produce testimony to rebut their evidence, if to be found in his Department. The only papers I now recollect to have been produced, as they have all been withdrawn, which were entitled to the name of evidence, were a bundle of schedules, all of which went to confirm the performance of increased speed, as agreed to by the Department, on the 3d of October, 1832.

This mass of evidence produced entire conviction in my own mind; and acting judicially, I felt myself bound by it, notwithstanding the new rule of evidence indicated in the following sentence, which is contained in the Postmaster General's letter of the 29th September, 1836, marked C.

"I informed you that the Department was not aware, by any evidence furnished to it, that those services were continued from the 1st April, to the 31st December, 1835." "*And this, from a Department which claims to understand its own business, was considered by me tan-*

tamount to a direct assertion that the services had not been performed."

I have a higher opinion of the laborious industry and attentive supervision of the Postmaster General over all branches of business under his charge, but I could not, acting in a judicial capacity, reverse all the known rules of evidence, and admit a declaration of a want of information respecting a service under his superintendence, to set aside positive evidence given under oath, by unimpeached witnesses, many of them personally known to myself, without allowing to the Postmaster General the attribute of omniscience. The force of testimony which would arise from such an attribute, can only be given by an act Congress, making a negative declaration of the Postmaster General to outweigh the affirmative testimony of the most respectable witnesses under oath.

The Postmaster General, by his report, has endeavored to make on your mind the impression that I have violated the law, and disregarded all reason in my action on the facts. He has weakened the high authority by which my construction of the act of Congress was sustained by an unfounded imputation of unfairness in the manner of asking the Attorney General's opinion, and concealed from you the ample testimony, under oath, on which my decisions were made, all of which was laid before and known to him. I will not imitate this example of injustice. I disdain, sir, while I lay before you, the most positive proofs, on the oaths of unimpeached witnesses, utterly irreconcilable with the positive declarations of the Postmaster General, to leave you uninformed of the manner, perfectly simple and obvious to me, by which the declarations may be reconciled with sincerity, though not with accuracy, at least, so far as respects increased speed. His error consists in not considering increased speed, which was originally two days in summer and two and a half days in winter; to have been increased twelve hours, as an equivalent for the delay occasioned by the National road being broken up for repair by the Government, by an agreement between the Department and the contractors. This is fully proved by the deposition of the Hon. Andrew Stewart, and the Rev. O. B. Brown, as is shown in the foregoing pages, where their testimony is spread out at large, and admitted by the present Postmaster General in his report to you, without, however, adverting to the necessary consequence of that omission. In that report he says, "In September of that year," (1832,) the contractors produced proof that, in consequence of the Cumberland road being broken up for repairs, it was scarcely possible, and not at all safe, to run at the speed of two days. In consequence, they were on the 3d October, allowed two and a half days each way, and on the 22d December they were allowed two days twenty hours returning; and the schedule from that time to the 31st December, 1835, with small variations, were conformed to this extended time; and, instead of proving that the increased speed was not performed, prove directly the contrary. And the continuance of the pay, up to the present Postmaster General's accession to the Department, shows

conclusively that the understanding of the Department, until that time, was conformable to the above view; and, if the schedules are considered, as I suppose they are the orders of the Department, they show a conformity to this view, and of course are reconcilable to the actual performance of the services, for which I have allowed, not only up to the time the present Postmaster General came into office, but afterwards, until the 31st December, 1835.

The Postmaster General had the power to suspend those services after he came into office, and aware of this, before making the award, I inquired of him, by letter of the 23d September, 1836, marked exhibit No. 17, whether he had exerted this power. He answers, "that not considering the services for which the allowances by the late Postmaster General were suspended in the account of Messrs. Stockton and Stokes, or Richard C. Stockton, on the routes from Baltimore and Washington to Wheeling as ever legally authorized, the Department has given no notification to those gentlemen to discontinue their services, other than declining to pay for them on the ground stated in the papers now before you.

The third claim presented by the contractors was for fifty per cent. in all their pay in consequence of the increased weight of the mail.

Of this claim the Postmaster General says, "to the undersigned the fifty per cent. allowance appears to have been equally without consideration from beginning to end."

He says also, "that there is abundant proof that they, '(the mails,)' were never a load for one four horse post coach daily."

On this subject I state in my report that "it appears to be fully proved, that in consequence of the *increased* expedition with which the mail was carried on the route from Baltimore to Wheeling, the heavy mails for the west, from the north and east, beyond Philadelphia, which had, before 1832, been carried on the route from Philadelphia to Pittsburg, were drawn upon the route from Baltimore to Wheeling; that at the period when the contract was made the mail from Baltimore and Washington to Wheeling averaged in weight about one hundred pounds. The fair interpretation of the contract, being the meaning entertained at the time of making it by both the contracting parties is, that, the contractors were to carry a mail, such as it was at the time of entering into the contract, with such addition thereto as should arise out of the *natural* growth of the business of the country. But in the case under consideration, there was a sudden increase from one hundred to two thousand pounds, which could not be accounted for from gradual and natural augmentation, but was attributable only to the cause above mentioned. Such an increase could not have been anticipated; and was not, therefore, in the contemplation of the parties when the contract was made. Justice required, therefore, an additional allowance of compensation for services in transmitting the mail which had thus increased in weight from ten to twenty fold.

The contractors propose to the Postmaster General, in the month of March 1833, to make the requisite increase of their means of transportation, and apply for an additional allowance of twenty-five per cent. on their pay to cover the expenses. The Postmaster General

directed that the services should be required, but suspended a decision on the compensation. Further experience taught the contractors that twenty-five per cent. increase of compensatiou would not cover the increased expenditure; and, in the beginning of June following, they asked, instead of twenty-five per cent., for an additional allowance of fifty per cent., which was granted by the late Postmaster General from the beginning of the contract; and the necessary instructions were given to the treasurer and pay clerk.

In support of their claims, as above stated, the claimants laid before me the statement of the predecessor of the present Postmaster General, one of the documents which I sent with my report to Congress, and is marked exhibit No. 24, and the statement of his chief clerk, the Rev. O. B. Brown, and other depositions and certificates, to establish the facts above detailed, which directly contradict the statements made in the above extracts from the Postmaster General's report to you. The former is as follows, viz:

"The first suspension has reference to an allowance of fifty per cent. in their compensation for transporting the mail from Baltimore and Washington to Wheeling. This allowance was made by me about the beginning of June, 1833. The testimony which was received, in relation to the weight of the mail, showed that, at the time of entering into that contract, (the latter part of 1831, to commence January 1, 1832,) the average weight of the mails was about eighty or one hundred pounds, but soon after the contract commenced it increased to more than twenty hundred pounds. About the same time the Government itself broke up a considerable proportion of the Cumberland road, preparatory to its repair, by which means it was rendered exceedingly difficult to travel with any degrees of rapidity. These were circumstances unforeseen and unanticipated when the contract was made, and the change of the condition of the road was effected by the Government without the agency of the contractors. It was obvious, therefore, that a line of stages could not carry upwards of a ton weight of mail, besides seven passengers, (the number stipulated in the contract,) and travel at the required speed under any circumstances, and especially in the dilapidated state of the road; and to divide the mail, so as to carry half of it in the slow line provided for, would produce great confusion and general discontent. The slow line had been provided for the purpose of supplying the small intermediate offices; and, to send by it any part of the great mail, would cause such part to be delayed in its progress. The increase of the mail was, therefore, such as to require a much greater service than was contemplated when the contract was made, or than the contract itself required; and it was obvious that the *whole* of that mail could not be transported under the contract, as it existed, without heavy losses, which must result in ruin to the contractors. It was under these circumstances that the allowance of fifty per cent. was made to the contractors for giving such increased expedition to their slow line, and for furnishing such additional stock of horses on both lines, as to carry the whole mail through in the time required."

"The proposition to perform this increased service, for additional compensation, was made by the contractors, in the spring of 1833, when they were directed to continue the service; but the decision, as to the amount of compensation for it, was suspended till June, 1833, when fifty per cent. was allowed."

"The form observed, in making decisions in all such cases, was to write upon the outside of the file of documents relative to such cases, or upon its envelope, my decision, and send it to the superintendent of mail contracts, by whom it was communicated to the division of finance, and noted on the contract. In this case the superintendent, Major Hobbie, was absent, and I was about leaving the city for Kentucky, before his return. I, therefore, wrote my decision, as usual, on the envelope, making the allowance, and [sent] it to the treasurer of the Department, and directed him to make the payments accordingly. This was about the beginning of June, 1833. This order being given to the Treasurer, he was directed to hand it to Maj. Hobbie, if I did not return from Kentucky; but, in the event of my returning, then the paper was to be returned to me. It was returned. But in the multiplicity of business connected with the Department, this matter was lost sight of, and did not come before me again, until an opinion had been obtained, that the accounts of the contractors were said to be overdrawn. Certain credits, it appeared, were omitted. This original paper was then sought for, and being found amongst my papers, was handed to Major Hobbie."

The statement, under oath, of the Rev. O. B. Brown, at that time chief clerk, is as follows:

Stockton and Stokes entered into a contract with the General Post Office in the autumn of 1831, to transport the mail between Baltimore Washington city via Frederick, Hagerstown, Cumberland, and Washington, Pennsylvania, to Wheeling, for four years, beginning the 1st January, 1832. When this contract was made, the fact was known that the average weight of mails did not exceed one hundred pounds on this route.

With this weight, the contractors proposed to give greater expedition to the route—which proposal was accepted; but they soon discovered that, in consequence of this increased expedition, mails, which had formerly travelled westward by other routes, came on this, and the weight, transported, rose from less than one hundred pounds to two thousand pounds and upwards. And, in consequence of these difficulties, an increase of the means of transportation also became necessary. This produced a complaint to the Postmaster General, of the unexpected burthen; and compensation was asked for such increase of expenditure, &c., the means of transportation intended and contemplated for the original weight not being at all adequate for the transportation of the increased weight at any thing like a rate of speed desirable to the Department and to the community. When these facts were communicated to the then Postmaster General, he directed the continuance of the service, assuring the contractors that

they should be compensated for any additional and unexpected labor and expense thus thrown upon them. But not, at that time, fixing any rate of compensation, or acting officially on the subject, the contractors deferred pressing the subject of compensation until after they ascertained what would be to them the fair average rate at which they could maintain the additional labor; and in June, 1833, they asked of the Postmaster General fifty per cent. upon their mail pay, as a fair compensation for the increased labor and expense; and this, of course, to relate to the commencement of the contract, *very* shortly after which this increased labor had begun. The Postmaster General having made all proper inquiries, determined that for the additional labor and expense incurred by the contractors, fifty per cent. additional to their former mail pay should be allowed, to take effect from the beginning of this contract. The Postmaster General endorsed this order for allowance on the papers in his Department, and ordered the treasurer of this Post Office to pay over the amount to the contractors; and which order the treasurer has regularly obeyed, and the contractors have received the appointment of the present Postmaster General.

From the close of the year 1833 sundry retrenchments were made by the Postmaster General on this and other contracts, but this allowance of fifty per cent. was never retrenched on the service ordered to be discontinued; or if the Postmaster General ever intended to discontinue it, he did not inform the contractors of the same, nor the treasurer of his own Department; but the contractors continued to perform the service, and the treasurer of the Department continued to pay them the fifty per cent. up to the close of Mr. Barry's administration of the Department.

It appears that when the Postmaster General decided in favor of making this allowance in June, 1833, and directed the treasurer of his Department to pay the same, his assistant, (S. R. Hobbie, Esq.,) who superintended that division of the transportation of the mail, was absent from the city, and the Postmaster General was about to absent himself, but he made the allowance in his usual form, by writing upon the envelope of the document containing the application—"The claim is just, and is allowed." And this document he left with the treasurer as his authority for paying the same; but directed him to retain it till he, the Postmaster General, should return to the seat of Government, and then to hand it to him, to be passed over to the assistant, Mr. Hobbie, for his information, as was usual in such cases.

In consequence of this accidental circumstance, it appears that the allowance was not placed to the credit of the contractors in the books of the Department till the beginning of the current year 1835, though the payment was regularly made to them by the Department. It also appears that the Postmaster General had intended to retrench this allowance at the close of 1833, and was under an impression that he had done so; but that all difficulty between him and the contractors on this point was settled, by the Postmaster General formally restoring it for the whole time about the last of March or 1st of April, 1835."

I will spread before you no more of the testimony respecting the propriety of this allowance of fifty per cent. of the increased weight of mails, but content myself with referring to the deposition of Moore N. Falls, R. L. Barry, Richard McClure, James P. Carleton, Thos. D. Carneal, and Jacob Rhor, marked exhibits Nos. 19, 21, 25, 26, and 27.

The last point to be considered, respecting the claims arising out of contracts, respecting the Baltimore, Washington, and Wheeling route, has reference to the reasonableness of the allowances made. This, I am of opinion, is as clearly established as the performance of the services. The sum allowed appears to be large, but it is to be recollected, that the claims established for the increased speed and extra horses and postillions, extend through two years; and that for the fifty per cent allowance for the transportation of mail which had increased from circumstances not in the contemplation of the parties when the contract was made, at least twenty fold, extends through four years. The time allowed me for making this report, compels me to restrict myself to merely laying before you the deposition of one of the witnesses on this subject, and making reference to the depositions of the others.

The deposition of Moore N. Falls, a gentleman known to me to be highly respectable and intelligent, is in the following words, viz:

MARYLAND, *Alleghany county, to wit:*

Before the subscriber, a justice of the peace, in and for said county, personally came M. N. Falls, merchant in Cumberland, who, being duly sworn, did depose and say, that he has been doing business for the National Road Stage Company, for the last five years, and has been intimately acquainted with their accounts and operations, and has attended personally to nearly all their quarterly settlements from 1831, to the present time; that at the time of taking the contract of 1831 and '2, the weight of the mail on this road, between Baltimore and Washington to Wheeling, did not average more than from a hundred and fifty to two hundred pounds; that, shortly after, the Department ordered an increase of speed on this route, the mails increased to upwards of two hundred pounds daily; that, in consequence of the increase of speed, and the great weight of mails, that it became necessary to put postillions, horses, and riders at all the mountains on the road, in order to ascend the mountains with speed. I should also have mentioned, that the company ordered that the passengers in the mail should be reduced from ten to six each way, making a difference of eight passengers each trip; and very frequently they have been obliged to turn every passenger out of the stage, in order to insure its arrival in time to save the mail. It also rendered it necessary to put on a second line at the same speed.

In consequence of this increase of speed, and a very rough road, the destruction of horses and coaches was very much increased, at least from forty to sixty per cent., and coaches three to one.

The following, he considers a fair and reasonable estimation of the increased expenses and losses by said company, in consequence of the increased speed and the greatly increased weight of mails:

1st. For 40 to 44 postillion horses, 20 to 22 riders, with harness, &c., per annum - - - -	$11,500 00
2d. For reduction of passengers from 10 to six each way, would be 8 per day; but to take the average, he would think that 5 passengers a day would be about the loss. 5 passengers at $13 each, for one year - -	23,725 00
3d. 50 per cent. increased expenses on horses, of which there are about 400, average cost abut $75, after allowing 33 per cent. for the general loss on horses in staging on this route, 17 per cent. would be a low estimate for the increased loss - - -	6,800 00
4th. On account of the destruction of coaches, as before stated, 3 for one, which is not a large allowance, when he has known as many as 3 coaches broken all to pieces in one trip with the great weight of mails, which, as has sometimes been ascertained to weigh 2,800 pounds, the average cost of coaches on the road has been about $10,000 per annum, as the books of the company will show. The increased expenses would be from $20,000 to - - - -	30,000 00

The deponent would further state that the losses of the company, of which he had every opportunity of knowing, was increased at least $20,000 per annum during nearly the whole of the last contract; that by the present contract, in which the heavy mails have been withdrawn, the company will make at least from 50 to 75 per cent. more than heretofore.

Sworn before
JNO. M. CARLETON, *J. P.*

The other deposition, relating to the equity of the award for increased weight of the mails, is marked exhibit No. 21.

To the above, however, I will add a statement, made out by Lucius W. Stockton, esq., one of the contractors, calculating the amount he would have received from the United States, if he had charged them at the same rate he regularly charges individuals, and is so clearly stated upon data already established by incontestible proof, that every person may judge of its reasonablenes for himself. It is as follows:

VIRGIL MAXCY, ESQ.,
Solicitor of the Treasury.

SIR: In order to give you some further idea of what we would be entitled to, "on principles of equity," in the settlement of our western

claims now before you, we beg leave to submit the following statements, viz :

The amount of the *weight* of mail upon our western road is clearly proven to have been upwards of 2,000 pounds, but say only - - - - - -	*lbs.* 2,000
Deduct the weight when contract was taken, proven to have been 100 pounds only, but say it was - - -	200
Additional weight per day - - -	*lbs.* 1,800

Under the most *un*favorable calculation for us, it is a rule on our lines, and we believe all others, to charge every passenger, or any other person *taking* or *sending* baggage, at the rate of one passenger's fare for every 150 pounds; and that, too, without being obliged to arrive at a given time or pay a fine; and also without any of the responsibilities or liabilities of carrying mails. Assuming then, that what individuals pay would be fair, and proper data on which to found a claim against the Government, we proceed to show that 1,800 pounds per day would amount to twelve passengers, as 12 times 150 make 1,800.

Our stage fare from Baltimore to Wheeling, at the time of this increased weight, was $18 75 each passenger; part time $15, and part $16, &c. The average, however, would, we think, for the whole four years be $16.

Twelve passengers per day would be at $16 - -		$182 00
Multiply by 365, the number of days in a year -		365
		910 00
		1,092 00
		546 00
Making the amount of dollars - -		$66,430 00

which Government would have to pay in the foregoing principle, for *increased weight* alone, without any increase of speed or responsibility, or fines for failures. The amount at *this time*, (now 1836,) paid by a passenger, or other person, for baggage, from Baltimore to Wheeling, is $17 for every 150 pounds, and without responsibility to carrier or fine for non-arrival in a specified time.

We will now contrast the amount we would be equitably entitled to with the amount allowed us by the Department for *increased speed, postillions*, and additional weight, viz :

Amount above stated - - - -		$66,430 00
Amount allowed for increased speed per annum - - - -	$6,750 00	

Postillions - - - -	9,812 00	
Increased weight - - -	19,254 00	
Total allowances for all - - -		35,816 00
Making a saving to Department, per year, of		$30,614 00

That, in the Government pay, $30,614 *less* than individual pay for like service. This, however, you will readily perceive is not a fair statement for us.

The following we consider the proper ground, viz:

Amount of 1,800 pounds per day is - - -	$66,430 00
Actual amount allowed for *weight* - - -	19,254 00
Actual saving to Government on the fifty per cent. claim	$47,176 00

As additional evidence that the calculation of $16 per 150 pounds is moderate, we will refer you to the report of the Post Office Committees, (*vide* Reports Ho. Reps. Report 103,) where it is shown, under oath, that from 1824 to 1828 the Department paid at the rate of $59 14 for what individuals paid $18 75.

The actual cost of postillions is shown by the evidence before you to be - - - - -	$11,379 13	per ann.
Actual amount paid by Department - -	9,812 00	
Leaving to Department or loss to contractors	1,567 13	

The actual cost of speed is almost beyond calculation. Nothing definite or exact can be arrived at. By reference, however, to the affidavits of R. S. Barry, Moore N. Falls, and John C. Hull, which are before you in the case, and allowing that the actual cost of speed was about one-half of what it is there computed, and you will, no doubt arrive at the conclusion, that the amount per annum was at least $30,000 00

Amount allowed by Department - - -	6,750 00
Saving to Department or loss to contractors per annum	$23,250 00

RECAPITULATION,

Showing the difference between the equitable amount, and the amount paid by the Post Office Department, viz:

Department allowed too little on weight per annum -		$47,176 00
Do.	on postillions - -	1,567 00
Do.	on speed - -	23,250 00
Total difference in favor of Government -		$71,993 00
Or in four years, (the contract term,) - -		$287,992 00

We respectfully submit the foregoing to your consideration in the settlement of your western accounts.

Your ob't serv'ts,
STOCKTON & STOKES,
L. W. STOCKTON,
DANIEL MOOKE,
Per L. W. Stockton

Let us conclude with another calculation to show the reasonableness of the allowance by Mr. Barry to Messrs. Stockton & Stokes, by comparrison with a contract made by the present Postmaster General with the same gentlemen.

From several remarks in his report, the Postmaster General appears to be of opinion, that he has a right to load a mail coach, if there be matter enough to do so, to such an extent as to exclude all passengers, though his predecessor, as appears from this statement, marked exhibit No. 24, construed the 7th article of the Post Office contracts, as reserving the right to the contractors to carry seven passengers, and, of course, denying the right to the Department, so to overload the coach with mails, as to deprive them of this privilege. Without discussing this point, though I have no doubt of the intention of both parties, when the contract for carrying the mail from Washington and Baltimore to Wheeling, was entered into, let us now calculate the cost to the Government of carrying the mail on that route in one four horse post coach, or mail wagon, without passengers, which the Postmaster General says was sufficient for transporting all the heavy mail matter that was thrown upon the route, from 1831 to the end of 1835. The Department is now under contract with Messrs. Stockton & Stokes, to pay them $12,000 per annum, for carrying the mail between Washington and Baltimore, thirty-eight miles, in a mail wagon, without passengers. It will not be contended that the mails on this route are heavier than they were on the route to Wheeling, in the years 1832, 1833, 1834 and 1835. Deduct, then, for the light afternoon mail between Baltimore and Washington, which can be carried in a sulkey, $2,000 per annum, though Messrs. Stockton & Stokes have a contract with the Railroad Company to carry it for them for $600 per annum, and $10,000 per annum will be left for the four horse mail wagon. The distance from Baltimore to Wheeling is 268 miles, and from Washington to Frederick, 34 miles—making, altogether, 311 to be traveled daily. Allowing them $10,000 per annum, for the four horse mail wagon, without passengers, from Washington to Baltimore, 38 miles, and allow for a four horse wagon, for 311 miles, at the same rate, and the expense, per annum, will be $81,842, being $24,030 per annum, more than all the allowances to Stockton & Stokes, (which were, altogether, $57,812 per annum,) made by Mr. Barry, for the Wheeling route, and for the four years of their contract, $96,120.

To the foregoing I will add the first award at large as made by me, and transmitted to the Postmaster General on the 12th November, 1836.

OFFICE OF THE SOLICITOR OF THE TREASURY,
November, 12, 1836.

SIR:—In obedience to, and in pursuance of the authority of "An act of Congress of the 2d July, 1836, entitled an act, for the relief of William B. Stokes, Richard C. Stockton, Lucius W. Stockton and Daniel Moore," by which the Solicitor of the Treasury is authorized and directed to settle, and adjust the claims of these gentlemen for extra services performed by them as contractors for carrying the mail, under and by virtue of certain contracts therefor, by them alleged to have been made and entered into with them by William T. Barry late Postmaster General of the United States, and for this purpose to enquire into, and determine the equity of the claims or any of them, for, or on account of any contracts, or additional contracts, with the said Postmaster General, on which their pay may have been suspended by the present Postmaster General, and to make such allowances therefor as upon a full examination of all the evidence may seem right according to the principles of equity," I have had under consideration, the claims of the said Richard C. Stockton, under the contract made on the 15th October, 1831, between said Stockton and William Neil, of Columbus, Ohio, and the late Postmaster General, for the transportation of the mail on sundry routes, so far as relates to the carrying thereof, on routes 1201, 1389, and 1390, and his, the said Stockton's, claims under the contracts additional thereof, alleged to have been entered into with the late Postmaster General. These claims are made by Mr. Stockton, are as follows, to wit:

1st. For increased speed on said three routes from the 1st of January, 1834, to the 31st December, 1835, according to the rate allowed at the Post Office Department, and paid for from the 1st of January, 1832, to the 31st of December, 1833, that is $1,687 50 per quarter, amounting to - - - - -	$13,500 00
2d For extra horses and postillions on the route from Baltimore to Wheeling, from the 1st of January, 1834, to the 31st of December, 1835, according to the rate allowed, and paid for, during the previous years, that is $2,453 per quarter, amounting to -	19,524 00
3d. For increased weight of mails, 50 per centum of $38,508, the amount of all the payments and allowances together, for services on the route from Baltimore to Wheeling, from 1st of January, 1832, till 31st December, 1835, being four years at the rate of $19,254 per annum, or sixteen quarters, at $4,813 50 per quarter, amounting to - - - - - -	77,016 00
4th. For interest upon such sums due from the Post Office Department, the pay of which has been suspended.	

I have made a full examination of all the evidence touching the above mentioned claims, and considered as well that which has been

communicated by the Post Office Department, and the Secretary of the Senate, as that received from the claimants, and collected by depositions, and obtained from public documents, and have decided that there are equitably due to said Richard C. Stockton, on account of said claims, the following sums of money, viz:

For part of the first mentioned claim for extra services, that is for five quarters, commencing with the 1st January, 1834, and ending on the 31st March, 1835, at the rate of $1,687 50 per quarter, the sum of - -	$8,437 50
For part of the second claim above mentioned, that is for five quarters, commencing with the 31st of January, 1834, and ending on the 31st of March, 1835, at the rate of $2,453 per quarter, amounting to - -	12,265 00
For part of the third claim above mentioned, on account of increased weight of mails, that is 50 per cent. on all payments and allowances for thirteen quarters, commencing with the 1st of January, 1832, and ending on the 31st of March, 1835, at the rate of $4,813 50 per quarter, amounting to the sum of - - - -	62,576 50
Making together up to the 1st of April, 1835, when the pay of said Stockton was suspended by the present Postmaster General, the total sum of - -	83,278 00

I have also decided, that there is equitably due to the said R. C. Stockton, on account of all the above claims for extra services for the 2d, 3d and 4th quarters of the year, 1835, commencing with the 1st of April and ending with the 31st December, 1835, the further sum (at the rate of $6,715 00* per quarter) of - - 26,862 00

I, therefore, in pursuance of the authority conferred on me, by the aforesaid act of Congress, make allowance to said Richard C. Stockton for the said claims up to the 1st of April, 1835, of the above sum of eighty-three thousand two hundred and seventy-eight dollars.

And I also by the same authority make allowance to said Stockton, for his said claims for extra services, from the 1st of April to the 31st December, 1835, of the said sum of twenty-six thousand eight hundred and sixty-two dollars.

A claim for interest having been made, I have postponed the consideration of it, until the equity of the other claims of the gentlemen named in the title of the act, shall have been enquired into, and determined.

I have the honor &c.

(Signed)

VIRGIL MAXCY,
Solicitor of the Treasury.

To the Honorable, AMOS KENDALL,
Postmaster General U. States.

The above is a clerical error, and the Postmaster General has been requested to insert in its place, 8,954.

I have now, sir, gone through with the items of my first award, and proceed to the second.

The first claim presented by the contractors and allowed by me, in my second award, consisting of two items, was for the transportation of an additional daily mail from the city of Washington and Baltimore to Philadelphia, by land conveyance, for 90 days during the winter of 1833–'4, requiring 30 teams, of 4 horses each, at $6 per day for each team, - - - - - - - - $16,200

And for the same, during the winter of 1834–5, for 100 days, at the same rate, - - - - - - 18,000

$34,200

The only question on these claims, was whether the line for which pay is claimed, was an additional line to those stipulated for in a present contract or not.

The Postmaster General goes into a long argument to show that there were several lines stipulated for in the original contract, some of which were run only a part of the time, and some not at all, but that all were paid for; and then says: "It would seem that in an equitable adjustment of these claims, the services paid for and not performed, should be taken into the account." But because they were not, he adds:

"The Solicitor seems to have overlooked the just claims of the public, and instead of deducting any thing for the very great services paid for, but not performed, he added in his equitable settlement, $1,800 to the allowances made by the former Postmaster General."

The answer to all these remarks is very short. The Postmaster General has forgotten, that according to his own position, I have no jurisdiction over any claims which have not been suspended by him, and that he has exhibited to me no proof of his having suspended from the credit of the contractors, any account of the pay received by them, which he now thinks I ought to have deducted from the claim under consideration.

In answer to his long dissertation to show that the claim in question was not for an additional service to those stipulated for in the contract, I shall content myself with extracting from my report to Congress, my remarks on this subject. In that report, I say:

"It is known, as a part of the history of the times, that, in the winter of 1832–'3, the editors of sundry newspapers in New York united in the establishment of an express between Philadelphia and New York, which out-travelled the United States mail. This circumstance bringing reproach upon the Post Office Department, it was determined by it to employ Mr. Green, Postmaster of Boston, and Mr. Bates, assistant postmaster of New York, to arrange a plan, if practicable, for a fast mail between Washington and Portland, which they accordingly did, and Richard C. Stockton, by a proposal to the Post Office Department, bearing date the 11th March, 1833, and marked

exhibit No. 34, engaged to carry it between Washington and Philadelphia in 20 hours. This proposal was accepted by the late Postmaster General, but for want of the necessary data for calculating the expense, ten thousand dollars were advanced towards it, and the amount of ultimate compensation was postponed for future consideration, when an experiment should furnish them.

At the time of making this proposal for carrying the fast mail, Mr. Stockton was carrying the mail at a different speed on the same route, under a contract with the Department bearing date the 15th October, 1831, and marked exhibit No. 36. There seems to be no dispute about the service, which is the object of the present enquiry, being performed, nor of its being performed well. But a question was raised whether, under the above mentioned contract, the contractors were bound to carry two daily mails between Baltimore and Philadelphia, in the winter season, or not. If they were, then they would be entitled to a compensation, as it regards the fast mail—not for a new line—but for an improvement of speed only in one of their daily lines. If they were not bound to keep up two daily lines, this was an entirely separate and distinct service, not stipulated for in the contract of October 15, 1831, but only in the proposal of 11th March, 1833.

The testimony of Mr. Barry, in his statement marked exhibit No. 24, and of O. B. Brown, in his letter of 10th January, 1835, to Messrs. Stockton and Stokes, marked exhibit No. 35, leave no doubt that the distinct understanding between the Department and the contractors in the undertaking to carry the fast mail, in the winter of 1833–'4, and 1834–'5, between Washington and Philadelphia, was a separate and distinct service from that stipulated in the contract of October 15, 1831, and, therefore, entitled to the full compensation for the duty performed, and not a mere additional or extra compensation for an increase of speed on an established line. If any futher document were necessary to sustain this position beyond all controversy, that document is supplied in the clear, able, and conclusive opinion and argument of Roger B. Taney, now Chief Justice of the United States, marked exhibit No. 37, in which the late Postmaster General, in his statement above cited, says, that this opinion was in perfect coincidence wih his. He accordingly allowed for the service in the winter of 1833–'4, the sum of $11,740 for the route between Baltimore and Philadelphia, and $4,460, between Washington and Baltimore—making, together, the sum of $16,200; being at the rate of $6 per day for each of 30 teams of 4 horses each, which was the number the service required for 90 days, which was the length of service in that winter. He, also, allowed the same sum for the like services in the winter of 1834–'5.

The fact being established that the subject of the present enquiry was a service in pursuance of a contract with the late Postmaster General, and the fact of the payment under that contract being suspended by the present Postmaster General being apparent from the account rendered by the Post Office Department, marked exhibit No. 31, it remains to inquire what allowance for the service is right, according to the principles of equity.

It is proved by the deposition of Alexander M. Cumming, at the time general agent of the line of Messrs. Stockton & Stokes, between Baltimore and Philadelphia, and of Messrs. Malta & Scott, clerks in their office at Baltimore, marked exhibit No. 39 and 40, that 30 teams, of 4 horses each, were employed in the transportation of the *fast mail,* in question, between Washington and Philadelphia, and that the service continued in the winter of 1833–'4, for 90 days, and in 1834–'5, 100 days.

It is proved by the depositions of Charles Goddard, N. B. Woodward, Hugh Cunningham, A. M. Cumming, and Alexander Scott, marked exhibit No. 41, 42, 43 and 44, that $6 per diem for each team, especially when is taken into consideration the great destruction of stock, from high speed, bad roads, and bad weather, is a reasonable rate of charge. Applying this rate of charge to the service rendered for 90 days in 1833–'4, and the amount will be $16,200, which Mr. Barry allowed.

It appears that the same sum was allowed for the service performed in the winter of 1834–'5 ; and, in directing the payment of it, he says, to Mr. Suter, the pay clerk, " allow the credit for sixteen thousand two hundred dollars, in conformity with the principles of the former decision, agreeably to the opinion of Mr. Taney." This shows that his intention was to allow the same rate for the service of 1834–'5, as he had done for that of 1833–'4, as the service in the year 1834–'5, continued 10 days longer than in 1833–'4. Justice requires, if $6 per diem for each team, be a reasonable allowance, which I think is abundantly established by the above deposition, that $1,800 should be added to the amount allowed for 1833–'4, making it $18,000—which I have accordingly awarded. It is presumed that Mr. Barry had not the testimony as to the number of days' service before him, or, as he adopted the principle of the first decision, made a mistake through some inadvertance.

The next claim allowed in my second award, to which the Postmaster General objects, is an account sent by the Post Office Department to this office. The 1st item, $1,240, is for one month's extra service in the spring of 1831. This item was allowed by Mr. Barry in another account, marked exhibit No. 46, all the items of which were allowed by him.

The objection to my allowance of this item is not that it is unfounded or exorbitant, but that I have no jurisdiction, because it arose under a contract with the Hon. John McLean, on which there is no pretence that the contractor's pay has been suspended.

The last position, that the payment of this claim has not been suspended, is not correct ; for a reference to the last class of suspensions in the account of the Department with the contractors, will show that the amount is the same as that of the account sent me from the Post Office Department, of which, the first item is this sum of $1,240, and which is herewith sent, marked, as above, exhibit No. 46 ; and if it arose under a contract with Mr. McLean, and not with Mr. Barry, I have to remark that the proof of that fact, as there was nothing on the face of the account to show it, ought to have been sent to this

office, which was not done; and in its absence I had a right to suppose, as I had called upon the Postmaster General for the documents which related to the matters submitted to me by the act of July 2, 1836, that the paper sent did not relate to any thing but what was within my jurisdiction. But suppose the contract was originally made with Mr. McLane, yet still, as Mr. Barry allowed the claim, that act may, without any great stretch of construction, be considered an adoption of the contract by him.

As the justice of this item is not disputed, I shall not trouble you with the view presented in my report to show it.

The principal items, however, in this account, are said not to be under my jurisdiction, because they are for *special* services, and not for services under a *contract* with the late Postmaster General; and a part of them are said not to be under my jurisdiction, because they were not suspended by the present Postmaster General, but by his predecessor. As to this last assertion, there was no proof sent to my office. That these services were rendered under a contract with Mr. Barry, I make the following extract from my report to Congress to show:

"The principal items of the account consist of charges for running two coaches instead of one, to transport the whole of the great mail between Baltimore and Washington, it being too large to be carried in one coach. These items make up by far the greater part of the sum of $6,423 46, which is the last amount suspended in the general account with R. C. Stockton. See exhibit No. 31. Of these the late Postmaster General makes the following remarks: "The last case of suspension is that of allowance for double lines of stages from Baltimore to Washington, on special occasions, when the mails which arrived at Baltimore by steamboat for Washington, were too large and heavy to be brought on by one line of stages. There was nothing in this contract which required them to run a double line at any time. They were required, whenever it should be ordered, to carry three mails a day between the two cities, as they were, for the accommodation of passengers, running lines of stages at three different hours of the day; but to run two lines, at the same hour, for the purpose of bringing the entire mail, *was what they were not bound to do*, and what could not be done without expense to them, which thir contract did not compel them to incur. When it was found that the mail was sometimes too great to be carried in one line, (a circumstance which had never before occurred, and which was not contemplated when the contract was made,) the contractors proposed to leave a part of it till the next line in order should run. This they were prohibited from doing, but directed to bring the entire mail at once and without delay, whatever force it might require, or whatever number of lines it might employ. This order they obeyed; and on such occasions it appeared reasonable to make the allowance. Such allowance had been made and paid to them prior to the last decision; and the last decision was not for a new allowance, the *principle having been already settled;* but it was rather an approval of the testimony upon which the performance of the service had been established. See exhibit No. 24."

"In the statement preceding Mr. Glenn's argument, which was sworn to by the Rev. O. B. Brown, it is said that Messrs. Stockton and Stokes were contractors for carrying the mail from Baltimore to Washington City. It sometimes happened that the mail which arrived by steamboat at Baltimore from Philadelphia was so large and heavy that one line of stages could not carry the whole of it to Washington; and the contractors proposed in such cases, to leave a part of it till their next line, in order, should run, as their contract bound them to carry the mail three times a day when the Postmaster General should require it, but it did not require them to run two lines of stages at one and the same time. They were prohibited, however, by the Department, from ever leaving any part of the mail, but were required to carry it all at the same time, though it might require more than one line of stages to do so. With this requisition they complied, and claimed compensation for the additional line of stages in such special cases. The Postmaster General, about three or four years since, allowed their claim, and made the payment. The contractors continued to perform the same service whenever the weight of the mail was such as to require it, expecting, of course, the same allowance to have been made, the principle having already been settled by the Postmaster General, and their drafts on the Department, which were accepted and paid, were based upon the conviction that these allowances could not be withheld. But they were not formally admitted by the Postmaster General till the spring of the present year, (1835,) when he decided to make the allowance. In this, as in all the preceding cases, (meaning the extra allowances considered in the previous part of this report,) the payments have actually been made." See the account of the Post Office Department with Richard C. Stockton, marked exhibit No. 31.

This account, which the late Postmaster General directed to be passed to the credit of Stockton and Stokes, amounts to $6,423 46; which amount has been suspended from their credit by the present Postmaster General. The same items which make up this amount are embraced in the account containing the class of claims now under consideration. But this latter account contains a considerable number of additional and subsequent charges for extra trips from Baltimore to Washington of the same kind as those allowed for by Mr. Barry in exhibit No. 46, and which I consider as performed under a standing contract with the late Postmaster General, whenever the mail delivered by the steamboat from Philadelphia at Baltimore should be too large to be carried in one stage, and therefore entitled to an award from me, if the amount charged be a reasonable and equitable compensation for the service actually performed.

That the services were performed is proved by the affidavit of Alexander M. Cumming, marked exhibit No. 50, and that the charge per trip of $20 is reasonable, is established by the depositions of Dennis A. Smith and David Barnum, two experienced mail contractors, marked exhibit No. 51.

For the reasonableness of the amount of the allowance in my last award, I beg leave to refer to documents marked exhibits Nos. 46, 50 and 51.

The last claim which the Postmaster General disputes my authority to allow, is that for interest, on the ground, 1st. that an authority to settle a claim on equitable principles does not confer authority to allow interest on such claims unless specially granted; and secondly, because the Solicitor has not allowed interest on the claims he has acted on, but "upon current pay withheld, with which he had nothing to do."

Whether the rule, as above stated, is well established in the Treasury Department or not in ordinary cases, I do not conceive it to be applicable under an act so broad as that under which my awards were made.

The act directs me to inquire into and determine the equity of the claims of the contractors, on account of contracts with the late Postmaster General, and to make such allowances therefor, as upon a full examination of all the evidence may seem right and proper, according to the principles of equity; and as it would be just, between individuals in such a case, that interest should be paid, I hold it would be equally so between individuals and the Government. In justice, interest ought to be paid, and the calculation of interest in the manner I have made it, was only a mode of arriving at an equitable result as to the damage the contractors had sustained in addition to the principal sum due for their extra services. To these observations, I beg leave to add the view I have taken of this point in my report to Congress, which is as follows:

"It is true as a general rule that the United States do not pay interest upon sums due to individuals, though, in many cases, they demand it. This rule is not based upon any idea of there being one rule of justice for the Government and another for the citizen. It is founded upon the idea that the Government is always ready to pay its debts, and if those having claims against it, do not present them duly authenticated for payment, it is owing to their own negligence that they do not receive their money. They are, therefore, not allowed interest. But when the Government has detained the money and refused to pay it, justice requires, upon its being ascertained afterwards that it was justly due, that the Government should do to its creditors, what it, when creditor, requires of its debtors, and pay interest upon the money thus due for the time it has been retained."

"Though this general principle may be readily admitted, yet there was some difficulty at first in deciding upon the manner in which it ought to be applied in the equitable settlement of the claims in question."

"The present Postmaster General had decided that certain large allowances made to the claimants by his predecessor, were authorized by law; and, as their amount had already been paid up to the first of April, 1835, he considers it an overpayment, and retains afterwards, in hand, all the current pay of the contractors which was allowed to be legal, as it became due at the end of each quarter, until the sums thus claimed to be overpayments, were reimbursed to the Department."

"Congress, to whom the contractors petitioned for relief, passing by

the question whether the allowances made by Mr. Barry were authorized by previous enactments or not, direct that their accounts, the U. States having received the benefit of their services, should be settled on principles of equity, and referred the matter to the Solicitor of the Treasury. That officer, on the proof laid before him, decides, with some small variations, that the allowances made by the late Postmaster General were no more than a just and equitable remuneration for the services rendered. The contractors had received their money, but were compelled to refund it in the manner above stated; and they presented a statement, marked exhibit No. 52, of sums of interest which they were compelled to pay to sustain themselves after the suspension of their regular dues, which statement is proved by the oath of their head clerk, A. Malter. If the controversy had been between two individuals under the same circumstances, what would a court, acting on the principles of equity and sound morality, decree? It is believed that but one answer can be made—the return of the several sums retained, with interest from the time of retention."

Believing that the spirit and letter indeed of the act, required the adoption of the same rule, I have, after mature consideration, awarded interest on the several quarterly sums retained by order of the Department, from the time they respectively fell due, until the date of the award. The whole amount of the sums of interest thus awarded, was $6,501 59, to Richard C. Stockton, and $392 34, to Lucius W. Stockton. See account of the quarterly pay of the contractors, marked exhibit No. 53, and the award of November 23d, 1836. The latter document, sent to the Postmaster General on the 28th November, 1836, is subjoined for your further information.

OFFICE OF THE SOLICITOR OF THE TREASURY,
Nov. 23*d*, 1836.

SIR: In obedience to, and in pursuance of the authority of an act of Congress of the 2d July, 1836, entitled "An act for the relief of Wm. B. Stokes, Richard C. Stockton, Lucius W. Stockton, and Daniel Moore," by which the Solicitor of the Treasury is authorized and directed to settle and adjust the claims of these gentlemen for extra services performed by them as contractors for carrying the mail, under and by virtue of certain contracts therefor by them alledged to have been made and entered into with them by William T. Barry, late Postmaster General of the United States, and for this purpose to inquire into and determine the equity of the claims, or any of them, for, or on account of, any contracts, or additional contracts, with the said Postmaster General, on which their pay may have been suspended by the present Postmaster General, and to make such allowances therefor, as upon a full examination of all the evidence may seem right, according to the principles of equity," I have had under consideration the claims of Richard C. Stockton, under a contract of William T. Barry, late Postmaster General, with said Stockton, in pursuance of a proposition of the latter, bearing date the 11th March, 1833, for the transportation of the fast mail between Washington and Philadelphia, on which contract his pay has been suspended by the

present Postmaster General. These claims, as made by Mr. Stockton, are as follows, to wit:

1st. For an additional daily mail from Washington city via Baltimore to Philadelphia by land conveyance, for ninety days, during the winter of 1833'–4, requiring thirty teams of four horses each, at $6 per team - - - - - - -	$16,200 00
2d. For like services, being for 100 days' service, during the winter of 1834'–5, 30 teams, at $6 per diem -	18,000 000
Making, together, the sum of	34,200 00

I have made a full examination of all the evidence touching the above mentioned claims, and considered as well that which has been communicated by the Post Office Department, and obtained from public documents, as that received from the plaintiffs, and have decided that there is equitably due to the said Richard C. Stockton, on account of said claims, the sum of $34,200; and, therefore, in pursuance of the authority conferred on me by the aforementioned act of Congress, I do make allowance, therefore, to said Richard C. Stockton, of the sum of thirty-four thousand two hundred dollars.

I have also had under consideration, sundry other claims of the said Richard C. Stockton, as follows, to wit:

No. 1. For compensation for carrying the mail between Baltimore and Philadelphia, for one month during the spring of 1831, after the steamboats in which the mail by Congress was to have been carried, had begun to run - - - - -	$1,240 00
No. 2. For compensation for mail guards for the above period, in 1831 - - - - - -	458 33
" 3. Also for one month in the spring of 1832 -	458 33
" 4. For furnishing arms and ammunition for 1831–'2 - - - - - -	76 50
" 5. For amount paid for boat in Philadelphia, and for expenses at Havre de Grace	
" 6. For going round by Port Deposite when the river Susquehanna was impassable - -	294 00
" 7. For running second coach with double mail from Baltimore to Washington, when the mails were too heavy for one coach, 39 times during the winter of 1831, at $20 each - - - - -	780 00
" 8. For the same service, 36 times, during the quarter ending on the 30th June, 1832, at $20 each trip	720 00
" 9. For the same service, 46 times, at $20 per trip, in the quarter ending September 20th, 1832 -	920 00
" 10. For same service, 41 times, at $20 per trip, in quarter ending 31st December, 1832 - -	820 00

No. 11. For same, 39 times, at $20 per trip, in quarter ending 31st March, 1833 - - -	$780 00
" 12. For same, 49 times, at $20 per trip, in quarter ending 30th June, 1833 - - - -	950 00
" 13. For same, 54 times, at $20 per trip, in quarter ending 30th September, 1833 - - -	1,080 00
" 14. For same, 35 times, at $20 per trip, in quarter ending 31st December, 1833 - - -	700 00
" 15. For same, 5 times, at $20 per trip, in quarter ending 31st March, 1834 - - -	100 00
" 16. For same, 34 times, at $20 per trip, in quarter ending 30th June, 1834 - - - -	680 00
" 17. For same, 34 times, at $20 per trip, in quarter ending 30th September, 1834 - - -	680 00
" 18. For same, 29 times, at $20 per trip, in quarter ending 31st December, 1834 - - -	580 00
" 19. For same, 14 times, at $20 per trip, in quarter ending 31st March, 1835 - - -	280 00
	$11,797 00

I have examined the evidence touching the above mentioned claims, as well that which has been communicated by the Post Office Department, and obtained from public documents, as that which has been laid before me by the claimants. The above claims I have decided to be equitable and just, with the exception of the one marked No. 6, amounting to $294, and do make allowance therefor to said Richard C. Stockton of the sum of eleven thousand five hundred and three dollars and sixteen cents.

I informed you in my letter of the 12th inst. that a claim had been made for interest, the Post Office Department having decided that the additional contracts, under which Mr. Barry had made sundry allowances, were authorized by law; and, as a consequence, that the payments of such allowances were overpayments, determined to withhold from the persons named in the act of 2d July last, the sums admitted to be due them quarterly, after the 1st April, 1835, under their regular contracts, in order to reimburse the sums thus overpaid.

Having, in pursuance of the authority conferred on me by said act, decided in favor of the equity of those allowances, it follows, as an incident to them, that interest is equitably due on the sums withheld by the Department from the several periods at which they became payable.

I have, therefore, decided that interest is equitably due to Richard C. Stockton on the following sums, which appear from the account transmitted from your Department, purporting to be the amount of payments to R. C. Stockton on account of transporting the mail on certain routes therein named from the 1st of April, 1835, to 1st of July, 1836, after deducting therefrom the sum of $6,375 96, which was over paid by the Department, on the 1st April, 1835—that is to say:

1st. On the current pay under Stockton's contracts for the 2d quarter of 1835, amounting to - - -	$24,149 21
After deducting therefrom the balance overpaid to him on the 1st April, 1835, - - - - - -	6,375 96
	$17,793 25
From the 1st August, 1835, to the 12 Nov., 1836, being for one year, 3 months and twelve days, amounting to - - - - - - -	$1,367 94
2d. On same for 3d quarter of 1835, amounting to $23,594 72, from 1st Nov., 1835, to 12 Nov., 1836, being for 1 year and 12 days, - - -	1,462 22
3d. On same for the fourth quarter of 1835, amounting to $23,487 60, from 1st Feb. to 12 Nov., 1836, being for 9 months and 12 days, - - -	1,103 27
4th. On same for 1st quarter of 1836, amounting to $18,458 72, from 1st May to 12 Nov., 1836, being for six months and 12 days, - - - -	590 17
5th. On same for the 2d quarter of 1836, amounting to $18,458 72, from 1st August to 12 Nov., 1836, being for the 3 months and 12 days, - - -	313 29
Making the whole amount of interest due R. Stockton on current quarterly pay admitted by Department - - - - - - -	$4,826 89

Having decided in favor of the equity of the allowances made by your predecessor, under contracts made by him with Richard C. Stockton for transportation of the mail, on the routes from Baltimore and Washington to Wheeling, I think it right, according to the principles of equity, to allow him interest upon the sums so decided to be due, from the several quarterly periods when they became respectively payable, that is to say:

1st. On the sum of $8,954 that became payable for the 2d quarter of 1835, on the 1st of August of that year, from that time to the 12 Nov., 1836, being one year, 3 months and 12 days - - - -	$689 21
2d. On the same amount that became payable for the 3d quarter of 1835, on the 1st Nov. of that year, from that time to the 12 Nov., 1836, being for one year & 12 days - - - - - - - -	554 90
3d. On the same amount that became payable for the 4th quarter of 1835, on the 1st Feb., 1836, being for nine months and twelve days - - - -	420 59
	$1,664 70

A claim for interest on his current pay, suspended by the Department, has also been presented by Lucius W. Stockton as follows:

1st. On $3,481 62, the amount due him on contracts with William T. Barry, upon the 1st April, 1835, from the 1st May, 1835, to 20 Oct., 1836, when principal was paid, being one year, five months and twenty days - - - - - - $307 38

2d. On $496 87, being current pay for 2d quarter of 1835, which became due on the 1st August, 1835, from the 1st August, 1835, to 20 Oct., 1836, being 1 year, 2 months and 20 days - - - - - 36 41

3d. On $478, being current pay for 3d quarter of 1835, which became due on the 1st Nov., of the same year from the 1st Nov., 1835, to the 20th Oct., 1836, being 11 months and 20 days.- - - - - 27 86

4th. On $478, being current pay for 4th quarter of 1835, which became due February 1st, 1836, from that day to 20th October, 1836, being eight months and 20 days - - - - - - 20 69

Making a total amount of interest due Lucius W. Stockton of - - - - - - $392 34

I have examined the evidence touching the above mentioned claims of interest, and have decided that they are equitable and just, and do, therefore, make allowance therefor to the said Richard C. Stockton of the sum of four thousand eight hundred and thirty-six dollars and eighty-nine cents, upon current pay withheld; and the sum of one thousand six hundred and sixty four dollars and seventy cents, upon the pay withheld upon the claims for allowances for extra services on the routes between Baltimore and Washington, from the 1st April, 1835, to the 31st December, 1835.

I have also examined the evidence touching the claims of said Lucius W. Stockton, for interest, and have decided that it is equitable and just, and do therefore make him an allowance therefor of three hundred and ninety-two dollars and thirty-four cents.

I have the honor to be, sir, with great respect,
Your most obedient serv't,
(Signed) V. MAXCY,
Solicitor of the Treasury.

To the Hon. A. KENDALL,
Postmaster General U. States.

NOTE.—On a revision of the foregoing awards, with a view to prepare a report for Congress, I discovered that error had been committed in one of them, in admitting to allowance four of the items of the account of the contractors, on the 2d page of his letter to the Postmaster General, who has been requested to cause the necessary correction to be made in it, by deducting $1,163 16, the amount of these items, from $11,503 16, the amount of the award as transmitted to the Postmaster General, thereby making the award correspond with my report to Congress.

I have now, sir, finished the defence I felt bound to make of the

award which has been so unsparingly denounced to you by the Postmaster General. I trust you will excuse my having occupied more time than you desired, for, as there was no part of that award left unassailed, I was obliged, not only to go over the whole ground occupied by my report to Congress, and show the reasons on which I had acted, which had been carefully kept out of your view, but also to expose the erroneous statements, the fallacious arguments, and the unjust and distorted representations contained in the report of the Postmaster General. In my reply, I have not imitated the course adopted by him, of making assertions without proof, but endeavored, and I trust successfully, to place beside my statement of facts, the evidence which convinced my own understanding, and which I confidently believe will satisfy all impartial minds.

I was well aware of the prejudice which attached to all allowances made by the late Postmaster General upon the claims which it has been my unpleasant duty to adjudicate, and while the act imposing it was in its passage through Congress, I endeavored to get a change of the arbiter they had selected. I partook myself of that prejudice, but I had, nevertheless, too much general knowledge of the nature of the claims, to be able to hide from myself the probability that I should be involved in the undesirable conflict with the Postmaster General which has been forced upon me. My efforts to avoid the responsible task, ultimately assigned me, were, however, unavailing, and Congress chose to clothe me with the authority of an arbiter between that officer and the claimants.

On assuming the judicial functions thus imposed, I was not insensible to the delicacy, resposibility, and danger of my situation; and in executing the duty of deciding between the claimants and the powerful head of a Department, I endeavored to purge my mind of all prejudice against the claims of the former, and of all apprehensions of consequences from the latter. The last, a sentiment that might well be inspired, had I been of a timid temper, by the frequent intimation received in the midst of my task, and contained in the Postmaster General's letter, in which he says: "I informed you that the Department was not aware, by any evidence furnished to it, that those services were continued from the 1st of April, to December 31st, 1835. *This, from a department which claims to understand its own business, was considered by me tantamount to a direct assertion that the services were not performed. What was my surprise, then, to find on my table the next morning your award of allowances for the services.*"

Notwithstanding this menacing intimation, made for the purpose of inducing me to allow the negative assertions of the Postmaster General to countervail the affirmative depositions of unimpeached witnesses, I have, under the high obligation of my official oath, discharged my duty firmly and impartially, and fearlessly court the severest scrutiny of the Senate, to which you intimated your intention to send the Postmaster General's report and this reply. On this reply and my report to Congress, I am willing to rest my reputation for a proper discharge of official duty and fidelity to the interest of the country—an interest which, when well understood, can never be

consistent with the denial of justice to its citizens—and to stand or fall as a public officer, before any tribunal which will have the patience to make a thorough investigation.

I cannot close the communication without adverting to the manner in which the controversy between the Postmaster General and myself has been conducted.

When I was apprised by his letter of the 24th September, that he was of opinion I had no jurisdiction of a part of the claims which it had been my duty to consider and adjudicate, and that he also denied the performance of the services for which compensation had been allowed, and declined carrying into effect my first award, I referred him to the words of the act from which I derived my authority, and made a few remarks in explanation of my construction of it; and, supposing from his denial of the service of the claimants, that he had omitted to communicate to this office all the proofs in his Department, I unhesitatingly withdrew the award, and asked him for such additional proofs, if he had them, as would rebut the evidence of services exhibited by the contractors. With an answer, dated September 29, 1836, marked exhibit C, and heretofore referred to, he sent me sundry schedules and other documents. In a few days after, and in order that he might judge what other testimony would be necessary, I sent him, as soon as I ascertained his willingness to inspect them, all the proofs which had been laid by the claimants before me, together with the Attorney General's opinion, confirming my jurisdiction.

In a few days afterwards I received another long letter, marked F, bearing date the 8th November, 1836, in which he attempted to prove from a variety of schedules and letters, that the services in question had never been performed.

Believing that these schedules confirmed, instead of rebutting the proofs exhibited by the complainants, as heretofore shown, I returned my first award in their favor, altered only in form, in order to separate the decision in favor of that part of the claim for services performed before the 1st of April, 1835, over which the Postmaster General admitted my jurisdiction, from that part over which he denied it.

In the report which was made to Congress in compliance with the injunctions of the law under which I acted, I made no allusion to the controversy which had arisen between the Postmaster General and myself. I did not think it right or proper to refer to the course he had pursued. It was for him or the claimants, and not myself, to mnke known to Congress his refusal to comply with the injunctions of the law. If I did not lay before that body to which he, as well as myself, is accountable, the correspondence which had passed between us, it was not on my own account that I omitted to do it. Though, in nowise amenable to the Postmaster General for my decisions, I thought it right that he should be informed of the reasons I had assigned for them, and, in a spirit of courtesy, sent him a copy of my report to Congress.

This example of open and frank conduct has not been imitated by the Postmaster General. On the contrary, he has made a long report

to you, under whom I hold my commission, denouncing my decisions as contrary to law and entirely unsupported by facts; and, instead of communicating to me a copy of his report, did not even notify me that he had made one, and it is to your justice alone I am indebted for an opportunity of knowing its contents and making a reply.

I am aware, sir, of my high responsibility in speaking under an indignant sense of injury and injustice with the freedom required by truth, of the conduct of one who is honored with a seat in your cabinet council. But I feel that I am addressing a Chieif Magistrate who will hold with untrembling hand the scales of justice, without respect to official rank, as well to a man of honor and a gentleman, whose known abhorrence of secret accusation is a guarantee that he will pardon the warmth with which I have repelled it.

With sentiments of great respect,
I have the honor to be, sir,
Your most faithful and obedient servant,
V. MAXCY,
Solicitor of the Treasury.

Exhibit K, referred to in Plff's petition, p. 10.

Exhibit K.—Postmaster General's letter to the President United States.

POST OFFICE DEPARTMENT,
February 13*th*, 1837.

TO THE PRESIDENT OF THE UNITED STATES:

SIR: The undersigned has read the letter of the Solicitor of the Treasury, commenting on his report in the case of Messrs. Stockton & Stokes, and begs leave to add a few observations.

The undersigned is not aware of using in his report an expression towards the Solicitor of the Treasury which is personally disrespectful; but of his public acts he has spoken with the freedom which public duty seemed to require. If such a discussion cannot be borne with good temper, it is much to be regretted, and the more so because it cannot be avoided. You will remember, sir, that it was with the consent and approbation of the undersigned, that his report was submitted to the perusal of the Solicitor. No further notice of his personalities seems necessary, nor is it necessary to explain the imaginary menace which it is idly attempted to extract from language which obviously bears no such meaning. The Solicitor's courtesy in sending a copy of the reasons is acknowledged; but it would have been more highly appreciated, because more useful, on a previous occasion.

The statement of the report in relation to the manner in which the opinion of the Attorney General was procured, is made by the Solicitor a subject of comment. That opinion appears to have been applied for on the 12th October. The controversy had arisen on the 24th September, and, on the 29th, the undersigned informed the

Solicitor that, with the views then entertained by the law, he could pay nothing upon the award beyond the claims actually suspended in the Department. On the 30th September, the Solicitor asked a return of the award, and, on the 1st October, it was returned accordingly.

The Solicitor admits that he concealed his application from the undersigned, and that he concealed from the Attorney General the fact that a practical question had arisen. Whether this concealment was right or wrong is a matter of opinion. It furthermore, now appears, that he did not submit the *whole* question which had arisen. That question was not whether he had jurisdiction of claims arising between 1st April and 31st December, 1830, only, but whether he had jurisdiction of *any* claims, *other than those suspended prior to the passage of this act.* Nor did he submit one, and perhaps the most material law point which had arisen. That was, whether the proceedings in reference to the restoration of the retrenched allowances constituted a "contract" within the meaning of the act. The undersigned is not vain enough to suppose that he could have submitted any thing which would have led the mind of the Attorney General to a different conclusion upon the *point submitted*, although he should not have despaired of it; but upon the other point he cannot have a doubt. If he had been apprised of the Solicitor's design, he would probably have brought the whole case, in all its law points, before the Attorney General, and prevented the unpleasant controversy. But, so far from being apprised of the design, he could not even suspect it, being entirely unacquainted with any provision of law which authorized a judge in chancery, which the Solicitor was in this case, to apply for the opinion of the Attorney General at all. The expression, "without a case stated," to which exception is taken, was intended to mean a *practical case*, in contradistinction to an *abstract point.* As well in reference to that, as generally to the conversation with the Attorney General, the undersigned gave the impressions remaining on his mind, and not the identical words used by that gentleman. Those impressions may not have been *precisely* correct, but he has no doubt they are nearly so. Whether the Solicitor was right or wrong, in the *manner* of his application, or in any applying at all, the undersigned did not assert, having no design to make charges against that officer.

Upon the opinion expressed by the Judiciary Committee of the Senate, the undersigned has no comments to make. It has been given without a full knowledge of the case, and the object in reporting the whole matter to you, is solely to bring it before them and the rest of the legislative authority. If Congress agree with the Solicitor, as to both the law and the facts, they will pass an explanatory act, and give the claimants the balance of the award.

Perhaps the undersigned has not viewed the question of jurisdiction altogether as a lawyer. He may have suffered his reasoning powers to travel out of the words of the law, and take for its meaning the "*bona fide*" intention of those who passed it. If appealed to individually, he has no doubt that ninety-nine in a hundred of

those who voted for the act, would say, that their only object was to provide for the equitable settlement of the controversy which *had arisen* between the contractors and the Department; and that the idea of authorizing the continuance of those allowances contrary to the will of the Department, or the making of new allowances not before made or suspended, or of allowances for damages or interest, never entered into their conception. It may be that the undersigned has been more influenced by the *real* intention of the legislators, than by their legal intention as elicited by the nice rules of judicial construction, which sometimes make the statutes say that which notoriously those who passed them never intended to say. He thinks, however, that the language of the act in this instance is not inconsistent with the real meaning of Congress, and should be so construed as to effect it.

But the nice rules of construction relied upon on one point to sustain the Solicitor's jurisdiction, if applied to another, will effectually annihilate it. The Solicitor admits, and such is the distinct intimation of the Attorney General's opinion, that to give any jurisdiction whatever, there must be a "*a contract by W. T. Barry, late Postmaster General,*" and "*a suspension of pay upon that contract by the present Postmaster General.*"

By the rules of law or common sense, where, in the facts disclosed, is there "*a contract*" to sustain a single allowance the Solicitor has made?

Courts of law and equity would undoubtedly construe the term "*contract,*" used in the act, to mean "*a legal contract,*" such "*a contract*" or "*additional contract*" as the Postmaster General was authorized by law to make. This sweeps at once out of the Solicitor's jurisdiction the whole 50 per cent. allowance, because the Postmaster General has no legal power to make an "additional contract" to allow, for an alleged increased weight of mails carried under a regular contract, the whole of the retrenched allowances, because the Postmaster General has no legal authority to make an "*additional contract,*" to pay an additional price for mails conveyed under a regular contract, without increasing the speed or the number of trips, the whole allowance for an extra mail from Washington to Philadelphia, (except an equitable allowance for increase of speed,) because the Postmaster General has no legal authority to dispense with the service contracted and paid for on any mail line, and make an additional contract with the same parties for the rendition of the same service, and thereby pay them twice for it, and the whole allowance for extra coaches between Baltimore and Washington, because the Postmaster General has no legal power, after contracting for such service in a regular contract in the consideration of which it is embraced, to make an "additional contract" for the same services, and thus pay for it twice over.

But let the legal absurdity be admitted that the contracts meant in the act, were not *legal contracts*, and that Congress intended to give the Solicitor power to make allowances upon any *illegal* contracts or *additional illegal* contracts made by the late Postmaster General &c., it would lead to the same result. What was the pre-

tended contract in relation to the 50 per cent allowances? In March, 1833, the contractors being then in receipt of pay for running a second daily mail, which they did not run, represented that the mail was too heavy to be carried in one stage, and offered to put an additional stock for an allowance of 25 per cent. on their existing pay. The department ordered them to run another full daily line and nothing more. They were already under contract and pay to run this line, so that this order, instead of making a *new* contract, was simply an execution of *an existing one.* From that time they merely rendered the service for the performance of which they were before under contract and pay.

Now, was any additional service ordered *afterwards*, or any "additional contract" alleged to have been made? It is not pretended. In June, 1833, however, the contractors ask an allowance of 50 per cent. on all their pay from 1st January, 1832, and they say it was granted *at that time;* but the record says in *February*, 1835. What feature of a *contract* was there in this allowance, *whenever* granted? What did contractors agree to do for the money? Did they in *June*, 1833, agree to put on additional stock *from the 1st January*, 1832? That was impossible. Yet the allowance was carried back to that date. All that was asked for in March, 1833, was 25 per cent. or $9,627 per year. Did the contractors in *June*, 1833, agree to render service from 1 *January*, 1832, which in equity entitled them to receive $19,254 per year from that time? The idea is absurd. Such a contract was impossible. Did they agree to do any thing *prospectively* or *retrospectively*, which they were not already doing, and amply paid for doing? No such thing has been shown; not even by the affidavits of the contractors' agents. No such thing is alleged by them. No such thing is stated by the Solicitor. Without an agreement to do something, or furnish something on their part, there could be no contract; and an allowance without consideration, is in law and in fact, not a contract but a gratuity.

The Solicitor had no legal authority to allow gratuity; and, as there was no contract in the case, legal or illegal, he had under his own construction of the law no jurisdiction of this claim.

Apply the same principle to the case of the retrenched allowances, alleged to have been restored, what "contract" or "additional contract" was there in that case? Before the commencement of their regular contract service, the contractors had agreed for a certain compensation to run through between Baltimore and Wheeling in 2½ days or 60 hours. They then offered for the additional sum of $6,750 per year, to run through in 2 days or 48 hours during summer, and their offer was accepted. This was a "contract" or "*a additional contract.*" To enable them to comply with the additional contract, as the weight of mails was increased, they were allowed $9,812 per year for extra horses and postillions. By the order of retrenchment, on the 19th November, 1833 this "*additional contract*" was received. Now, when or how was it received? The Solicitor says, in December, 1833, or January, 1834, and he gives his proofs. The first is a statement of the Hon. Andrew Stewart, the point of which is as follows, viz:

That, shortly after the order of the Post Office Department suspending or discontinuing the increased speed, postillions, and second line, on the line from Washington and Baltimore to Wheeling, I had an interview with the late Postmaster General, &c. "He then said, distinctly, that it should be done. That the speed, postillions, and second line on this route, with the compensation, should be continued, and that I might so inform the contractors—which I did accordingly."

The next is a statement of Thomas D. Carneal, Esq., the point of which, is as follows, viz: "I reached Washington about the 10th of January, and on the next day after my arrival, made known to Major Barry the peculiar hardships and difficulties the contractors on that route had to contend with, &c. He referred to Major Hobbie, who was called in, and to whom I was introduced by him," &c. "To aid me in this, I called on Col. R. M. Johnson and Major Eaton. We met at the room of the Postmaster General, and the subject was taken up, fully discussed, and resulted in the restoration of the original order making the extra requisition, with the allowances then paid by the Department, for each extra service prior to the suspension order."

The next is a statement of the Rev. O. B. Brown, the point of which, is as follows, viz: "I do not recollect the time, but I believe it was in the beginning of January, 1834, he (Major Barry) told me that he had determined to restore the whole of what had been retrenched on this route."

These statements all expressly refer to what was said and done in the months of *December*, 1833, and January, 1834. To them the Solicitor adds a letter from the late Postmaster General to R. C. Stockton, dated 2d *February*, 1834, *which at once sweeps away his whole superstructure.* Major Barry says: "I have received yours of the 31st. It was intended to direct you to continue improvements *already* on the road to Wheeling as *indispensable.* The form of the order does not perhaps meet the case, and it will be important for you to be present *when it is done;* but this need not hasten your visit to Washington to the neglect of the other important engagements, and can finally be adjusted hereafter. I would say more, but the subject is a delicate one, that can better be arranged by *personal converse.* Be assured of my disposition to do what is just and liberal."

And this letter the Solicitor exhibits to prove that the retrenchments had already been restored! Why, on its face it is the most conclusive proof of the contrary that can well be conceived. All the conversations of Messrs. Stewart, Corneal, Brown, and others, had most palpably led only to the order of the 28th January, 1834, written by Major Hobbie, not directing the restoration of the allowances, but stating that if the contractors continued to employ the extra horses and postillions, the Department would pay for them at some future time when it would be able. These it had been represented were "*already on the* road," and "indespensable." No sooner does Mr. Stockton receive this order, which restored none of the allowances absolutely, and only one of them conditionally, than he writes to Major Barry his letter of the 31st January, which elicits this reply of 2d

February. The matter was then placed in *statu quo*. The Postmaster General "had every disposition to do what is just and liberal," but the matter was to be "finally adjusted *hereafter*." The contractors were told "it will be important for you to be present *when it is done*." It can "better be arranged by personal converse *hereafter*." What clearer proof could there be, that it had not then been done?

Now, when did this adjustment take place? Never. There is not a scintilla of evidence that any thing was ever said or done on the subject. The Postmaster General adopted another course to evince his liberality. He consummated, and continued the 50 per cent. allowance, which amounted to more per year than the retrenched allowances; and, when he was told that this act was construed to restore those allowances, he informed his junior assistant, and instructed his pay clerk, that such was not his intention.

Thus it is proved conclusively as evidence can prove any thing, that there was no "contract" in this case "*legal or illegal*"—none in the law or common sense. What the Solicitor calls a contract, is merely the expression of the Postmaster General's intention in various conversations, but indistinctly, and in some cases inaccurately remembered, for the witnesses speak of the restoration of the second daily line, which had never been discontinued. As there was no contract in this case, legal or illegal, there was nothing to support the jurisdiction of the Solicitor, *according to his own construction of the law*.

Equally vain will it be to attempt to make out "a contract" for the alleged extra mail from Washington to Philadelphia, other than "an additional contract," to increase the speed three hours. Beyond that additional contract, and an equitable allowance for its faithful performance, no basis can be found in any contract, legal or illegal, on which the Solicitor's jurisdiction can rest. Still less is there the shadow of "an additional contract," bringing the claims for extra coaches within the jurisdiction of the Solicitor.

It will thus be perceived that, had the Solicitor submitted the whole case to the Attorney General, on the principles assumed by himself, or afforded an opportunity to have it done, his jurisdiction must have been circumscribed to much narrower limits than the undersigned conceded to it. But the Solicitor reserved to himself the power to decide what was a "contract" or "additional contract," and had no difficulty in finding one whenever the contractors had a claim. Retrospective allowances, loose conversations, orders to expedite the mails, and orders to bring on the whole mails in the absence of all legal power, and tangible form, have been raised to the dignity of Government contracts; and, now, the act of allowing a charge for extra service under a contract made by the Hon. John McLean, is made *ipso facto* proof of the adoption by the late Postmaster General of some prior contract or imaginary additional contract authorizing it! Upon grounds so vague and untenable has a jurisdiction been vested, which has taken out of the funds of the Post Office Department $122,000, and claims near $40,000 more.

Let not the undersigned be misunderstood. He did not rest the

jurisdiction of the Solicitor on this ground. This is the ground occupied by the Solicitor himself, and these are the results of the rules of construction which he adopts. The undersigned believed the act was intended to give him jurisdiction of all the claims suspended, nothing more, and nothing less; and these results are suggested to give the case, in the consideration of Congress, the full benefit of the construction of the law, which the Solicitor lays down as the basis of his proceedings. The point was not presented to the Attorney General, nor has it received the consideration of the committee of the Senate.

The Solicitor seems to take offence at the allegation that the service for which he has made allowances under the imaginary contract restoring the retrenched allowances was never performed. So far as the *fact* is concerned, he admits it himself; but resorts to a course of reasoning to show that a *non-performance* is, in equity, equivalent to a *performance*, or rather that, in the imaginary contract for restoration, it was stipulated that the *pay* should be restored, but not the *service!*

By the original contract the contractors stipulated to run through each way in 2½ days or 60 hours. This the Solicitor calls "*increased speed.*"

By an additional contract they stipulated for the additional compensation of $6,750 to run thro' each way during summer in two days without any change in winter. This the Solicitor calls the "*improved speed.*"

The time in which they were actually required to run through during the contract was as follows, viz:

	Going.	Returning.
From Jan. 1, to 18 Ap'l, 1832,	3 ds. 4 hr's.	3 ds. 1½ hr's.
Thence to 12th June,	1 " 23½ "	2 "
" 3d Oct.	2 "	2 "
" 22d Dec'r	2 " 12 "	2 " 12 "
" 22d Ap'l 1833,	2 " 19 "	2 " 20 "
" 25th November	2 " 6 "	2 " 6 "
" 23d Ap'l, 1834,	2 " 23 "	3 "
" 22d November	2 " 12 "	2 " 15 "
" 18th Ap'l, 1835,	2 " 23 "	3 "
" 28th November	2 " 12 "	2 " 15 "
" 31st December	2 " 23 "	3 "

On the 3d October, 1832, a dispensation of the "improved speed" was granted temporarily on account of the condition of the Cumberland road, which was then broken up for repairs.

Now, the Solicitor does not pretend that the "improved speed" was required or performed after the retrenchment and the imaginary restoration; but to sustain his allowance for a service confessedly not performed, he flings over the bad roads of 1832 into 1834 and 1835, and most logically extends the temporary dispensation of Oct. 3d, 1832, to the close of the contract! Unfortunately, however, for the chain of his reasoning, one half the dispensation was withdrawn in

the summer, 1833, prior to the retrenchments during which the contractors were required to run through, and generally did run through, in 2 days and six hours.

To make his reasonings hold together they should have been required to run through in that time, at least during the summer of 1834 and 1835. So far from it, they were allowed 2½ days one way, and 2 days 15 hours the other, being by three hours a less speed one way, than they were under contract to make, before the "improved speed" was first authorized. The restoration, therefore, by the Solicitor's own showing, was a restoration of *pay* only, but not of *service*. So far as *performance* is concerned, what more has the undersigned alleged? As to the fact, there is no difference. The service was not performed. It is not pretended to have been performed. The allowance made for it, therefore, is not an equitable allowance for *services performed* under any "contract" or "additional contract," but for services *not performed;* for the services *performed* the contractors were fully paid according to their contract. The question as to the Solicitor's power to consider and allow claims for services *not performed*, requires no discussion.

The undersigned, in his report, suggested that the equitable claims of the Government for services paid for and not performed under the contracts in question, ought to have been set off against the claims of the contractors. The Solicitor, however, disclaims all power to consider the rights of the Government in this matter, and professes to be surprised at so "loose an idea." The "strict construction" of his powers, adopted by him in this point, is certainly very convenient for the contractors, though perhaps, not very defensible. For example: The contractors were under contract and pay to run two daily mail lines between Baltimore and Philadelphia, but for most of the year ran less than one. At length, the Department ordered them to run two for a few months, being no more than they were paid for doing the whole year. These lines are both paid quarterly. Months after the first services have been performed, however, the contractors allege that this swift line is run under some new and special contract, and must be paid for as such. Finally, the Solicitor confirms their allegation. The Department then insists that the amount *paid for it already* shall be set off against the *amount now claimed*, but the judge in equity not only rejects the claim, but is astonished at the suggestion.

So, on the route from Washington to Baltimore, the contractors were under contract and pay to run four or five daily mails, and only ran two or three. A swifter mail was wanted, and one of the two or three already run was expedited, but the number running not increased. This, also, the contractors maintain, is an *additional* mail, and the Solicitor so decides. The Department then insists that the amount paid for the line, which ceased to run to make room for it, shall, in the court of equity, be taken as part pay for it; but the judge is astonished at such "a loose idea."

So the Department paid for running several daily mails between Washington and Baltimore, as well as "*express mails whenever re-*

quired." But, when express mails were required, the contractors insisted that they ought to be paid for them specially, and the Solicitor decides that they are entitled to it, rejecting the "loose idea" of making any set off of the moneys paid for the identical service under their general contract! It cannot be necessary, further, to illustrate the unjust and unequal operation of such a principle.

It is not the business of the undersigned to decide what weight ought to be given to his "*official assertions.*" Though sustained in his letters to the Solicitor by proofs which he deemed conclusive, that officer, no doubt, thought he was right in disregarding them altogether, and basing his award on the assertions of the claimants and their fellow-contractors, the affidavits of their agents, who were, or had been, directly dependent upon them, of tavern keepers, who profit by their custom, and of personal friends, all taken *ex-parte*, without cross-examination, and shown to be full of errors and extravagancies. The greater portion of these papers, which have been made to outweigh the "official assertions," books, records, and files of the Department, is not such, however respectable may be the witnesses, as would be received by any court of law or equity in the United States which has the least respect for the ordinary rules of evidence. The truth of this will be confirmed by adverting to such of them as the Solicitor has copied into his letter. Though, perhaps, true upon the data assumed, it may be safely asserted that the estimates and calculations are wholly deceptive as a means of showing the value of the service, or the amount which ought, in equity, to be paid for it. They present a case, made up by the parties claiming, with all the colorings which interest can inspire.

The undersigned introduced a notice of the committees of Congress into his report only to avail himself of their conclusions to elucidate the case. As to the equity of certain allowances to the contractors those committees and the Solicitor certainly differed in opinion. The committees thought the allowances, made prior to their investigations, far more than were equitable. The Solicitor thought all those allowances, and $122,000 more, some $40,000 less than is equitable. The committees certainly did not condemn the Solicitor, but the Solicitor may have condemned the committees. Which was right, or whether either, is a matter of opinion, but to agree with the one is not necessarily to [the] censure of the other.

The Solicitor introduces the present mail service, between Washington and Baltimore, as a criterion with which to compare the service rendered by contractors on the Wheeling route. There is no analogy in the cases. On the Baltimore route, no passengers are carried with the mail, as they all travel by the rail road. On the Wheeling route all travellers passed in stages. The swift line carried generally from six to ten, and the slow line ten or twelve. The Solicitor falls in the habit of contractors in making estimates, omitting altogether the immense sums received for passengers.

There are better tests of the extravagance of these allowances. The contractors offered the services of one line at $4,450 per year,

or $17,800 for four years. The Solicitor's award fixes their pay for two lines on the same route, one of them expedited, at $57,762 per year, or $231,048 in four years. There was an *improvement* of $213,248, or more than *fourteen fold.*

But take another test: The present mail pay on all the great routes from Baltimore and Washington to *Louisville, Ky.*, a distance of 689 miles, is but $44,882 per annum, falling short of the *equitable* pay, allowed by the Solicitor, on less than half the distance, $12, 880. The great eastern mail falls upon this line at Washington, Pa., and is now carried upon it 411 miles, being 101 miles more than the distance from Baltimore and Washington to Wheeling; moreover from Baltimore to Wheeling during the session of Congress, and from Wheeling to Cincinnati during the whole year, no passengers are now permitted to be carried in the mail stages going out, whereas, there was no restriction in the former contracts, and from six to ten were generally carried in the swift line, and ten to twelve in the slow line.

But, take the line of the great eastern mail from Philadelphia, through Bedford, and Washington, Pa., Wheeling and Cincinnati to Louisville, Kentucky, a distance of *seven hundred and fifteen miles*, and the present compensation for carrying it, most of the way without inside passengers, and restricted to three on the outside, is $39,081 42 per year, being $18,680 52 less than has been allowed to the claimants in this case for less than half the service and without restrictions.

When the great and constant increase of mails from east to west is considered, the disparity of the equitable allowance made by the Solicitor to the compensation, at which double the service is now rendered, is too obvious to need further illustration.

The undersigned does not send, with this report, the papers referred to, because he neither asks nor expects an investigation by you with a view to deprive any one of his commission, or to perform any other definitive act. If you think the matters stated worthy the consideration of the legislative branches, you will send the reports to them, and then, if thought proper, the matters alleged will be fully investigated. Whenever such an investigation shall be instituted, the papers and proofs to sustain the statements made to you, and through you to Congress, will be ready for presentation.

The undersigned is reproached with making himself "a party" in this case. It cannot be meant that he has any personal interest in it; on the contrary, by the stand he has taken, he may incur the lasting hostility of powerful men, without securing the least advantage to himself. If, by becoming a party, it be meant, that he maintain the rights of the Government as absolutely as if they were his own, he is content to bear the reproach. This he considers himself bound to do, and whatever personal hazard or sacrifice, so long as entrusted with their guardianship, on all occasions when attempts may be made to invade the interests, or take the property of the public, under his charge, without right or law, he will ever be "a party," ready to defend them by all appropriate means. In this matter he has sought

only to place the claims of the contractors in their true light, "without fear, favour, or affection," and having taken the appropriate steps to accomplish that object he is content to abide the result.

With the highest respect,
Your obedient servant,
AMOS KENDALL.

Exhibit L, referred to in plaintiff's petition, p. 11.

Exhibit L.—Report of Committee of Senate.

IN THE SENATE OF THE UNITED STATES.

JANUARY 20TH, 1837.

[Read, and ordered to be printed.]

Mr. Grundy made the following

REPORT:

The Committee on the Judiciary, to whom was referred the petition of Lucius W. Stockton and others, have had the same under consideration, and beg leave to present the following report:

A brief history of the transactions which have been submitted to the investigation of the committee will contribute to the right understanding of the views entertained, and the conclusion to which the committee have arrived.

The petitioners were, during the administration of the late Postmaster General, large contractors for the transportation of the mail on some of the most important routes in the United States; on some of these routes changes or modifications of the contracts were made, on others, extra services, with a compensation promised, were ordered by the Postmaster General. In most instances, the compensation was paid or advanced by the entry of a credit in favor of the contractors upon the books of the Department. When the present Postmaster General came into office he considered it his duty to examine into the legality of the allowances made by his predecessor to the petitioners. Upon this examination he came to the conclusion that a large portion of the allowances made to the petitioners were unauthorized by any existing law, and to secure the Department from loss, he retained the moneys which fell due to them upon current contracts at the end of each quarter, to an amount equal to the different sums which he believes had been illegally paid or advanced to them. In this state of things the petitioners applied to Congress, at its last session, and Congress, upon their application, passed the act of the 2d July, 1836, for the relief of William B. Stokes, Richard C. Stockton, Lucius W. Stockton, and Daniel Moore. By this act the Solicitor of the Treasury is selected to settle the claims of the

petitioners, and the claims to be settled by him are restricted to extra services, performed "by them as contractors for carrying the mail, under and by virtue of certain contracts therefor, by them alleged to have been made and entered into with them by William T. Barry, late Postmaster General of the United States; and, for this purpose, to enquire into and determine the equity of the claims of them, or any of them, for, or on account of, any contracts, or additional contracts, with the said Postmaster General, on which their pay may have been suspended by the present Postmaster General, and to make them such allowances therefor, as, upon a full examination of all the evidence, may seem right, according to the principles of equity; and, that the Postmaster General be, and he is hereby directed, to credit such mail contractors with whatever sum or sums of money, if any, the said Solicitor shall so decide to be due to them, on account of any such service or contract, and the said Solicitor is hereby authorized to take testimony, &c.

By the provisions of this act, it is apparent that Congress intended that not only a different arbiter, but a different rule of adjudicating these claims, should be applied from that existing prior to the passage of the act. By the former laws, the Postmaster General decided upon all such claims; by this act the decision of these claims is transferred to the Solicitor of the Treasury.

By the former laws the Postmaster General had no rule for the government of his conduct, but the rules prescribed in the several acts of Congress establishing and regulating the Post Office Department. By this act the principles of equity are to govern the decision of the Solicitor.

From this view of the act of the last session, the committee did not deem it proper to go into an examination of the claims decided upon by the Solicitor, except so far as to ascertain whether the claims adjudicated upon were submitted to his decision by the "act for the relief of William B. Stokes, Richard C. Stockton, Lucius W. Stockton, and Daniel Moore," approved 2d July, 1836. Upon this branch of the subject the attention of the committee has been principally directed to the just construction of the language of that part of the act conferring upon the Solicitor his powers. The Solicitor is directed "to enquire into, and determine the equity of the claims of them, or any of them, for, or on account of, any contract, or additional contract, with the said Postmaster General, on which their pay may have been suspended by the present Postmaster General, and to make them such allowances therefor, as, upon a full examination of all the evidence, may seem right, according to the principles of equity, &c.

By the expressions here employed, it seems to this committee that two things only are requisite to give power or jurisdiction to the Solicitor:

1st. That the claims presented should be for or on account of contracts made with the late Postmaster General.

2d. That the present Postmaster General shall have suspended the pay. The committee have not discovered that any allowance has

been made by the Solicitor, except in cases falling within his jurisdiction, when tested by these restrictions. It is true, he has allowed compensation for services adjudged by him to have been rendered by the petitioners since the late Postmaster General retired from office; still, these claims were on account of contracts made by him, and the act of Congress plainly submits to the adjudication of the Solicitor all such cases, without any reference to the time when the services were rendered; and it cannot be believed that the time when the services were rendered, or the claims fell due, was deemed in anywise material by Congress, or some expression restricting the powers of the Solicitor would have been introduced into the act besides the act directing the Solicitor to settle the accounts, passed after the expiration of all the contracts, and after the rendition of all the services which may have been performed under them; from which facts, in connexion with the broad and comprehensive language of the act, it may fairly be inferred, as the intention of Congress, that the whole claims for services under the contracts specified in the act, were to be adjusted and settled by the Solicitor, without regard to the time when the services were performed; and further, that a suspension of any portion of the pay, even for a single quarter, upon such contract by the present Postmaster General, authorized the Solicitor to investigate all the claims of the petitioners under such contract.

That Congress intended the award of the Solicitor to be final, is apparent from the direction of the act—"that the Postmaster General be, and he is hereby, directed to credit such mail contractors with whatever sum or sums of money, if any, the said Solicitor shall so decide to be due to them," &c. If Congress had intended to revise the decision of the Solicitor, the Postmaster General would not have been directed to make the payment, without the intervention or further action of Congress.

Unless it appeared, which is not suggested by any one, that some cause exists which would vitiate or set aside the award between private parties before a judicial tribunal, the committee cannot recommend the interference of Congress to set aside this award, and more especially as it has been made by a high officer selected by the Government, and the petitioners have been subjected to the trouble and expense of investigating their claims before a tribunal created by Congress itself.

It appears that since the award was made by the Solicitor, the Postmaster General has paid to the petitioners the sum of $120,938 30, leaving the balance of $40,625 59 unpaid of the sums awarded in favor of the petitioners. From the view which the committee have taken, the conclusion at which they have arrived is, that the whole amount decided to be due, and owing to the petitioners, by the Solicitor of the Treasury, ought to be paid to them out of the funds of the Post Office Department, according to the directions of the act, entitled "An act for the relief of William B. Stokes, Richard C. Stockton Lucius W. Stockton, and Daniel Moore," and that no further action of Congress is necessary; therefore, the committee recommend the adoption of the following resolution:

Resolved, That the Postmaster General is fully warranted in paying, and ought to pay to William B. Stokes and others, respectively, the full amount of the award of the Solicitor of the Treasury.

Exhibit M, referred to in plaintiff's petition, p. 11.

Exhibit M.—Report of Committee of Senate.

IN SENATE, *February 17th*, 1837.

Mr. Grundy made the following report:

The Committee on the Judiciary, to which was referred the message of the President of the 15th instant, with the accompanying documents, in relation to the claim of Stockton, Stokes, and others, have had the same under consideration, and make the following report:

The President of the United States, in his message, expresses no opinion in relation to the subject under consideration, nor does he recommend the adoption of any measure whatever. He communicates the report of the Postmaster General, the review of that report by the Solicitor of the Treasury, and the remarks of the Postmaster General in answer thereto, together with such vouchers as are referred to by them respectively.

The committee have considered the documents communicated, and cannot discover any cause for changing their opinion upon any of the principles advanced in their former report upon this subject, nor the correctness of their application to this case. They therefore recommend the adoption of the resolution heretofore reported by the committee.

Exhibit M, a, referred to in plaintiff's petition, page 11.

Exhibit M, a.—Letter of P. M. General to Judiciary Committee of Senate.

POST OFFICE DEPARTMENT,
January 18, 1837.

Hon. FELIX GRUNDY,
Chairman Jud'y Com'tee U. S. Senate:

SIR: Having casually heard of the decision of your committee in reference to the memorial of Messrs. Stockton and Stokes, and the act for their relief, I cannot satisfy myself that I shall have performed my duty in relation to the public interests entrusted to my charge, if I do not most respectfully ask to be heard by them before they make report.

In that event I think I can satisfy them that the act referred to was not intended to, and did not in fact, authorize the action of the Solicitor of the Treasury upon any claims set up by Messrs. Stockton and Stokes, other than such as had been suspended from their credit by me.

But should I be insuccessful in that effect, I cannot be mistaken as to my ability to show that, having already received over *one hundred thousand dollars*, without rendering any equivalent whatsoever in public services, no step ought to be taken by the committee or by Congress tending to enable them to receive near *forty thousand dollars* more, equally without an equivalent, or to bring reproach upon me, directly or indirectly, for refusing to pay it under my construction of the law. On the contrary, I mistake the case and my ability to make myself understood, if I cannot convince the committee that the act referred to, instead of receiving greater force from any action on their part, ought to be forthwith repealed.

Very respectfully,

Your obedient servant,

(Signed) AMOS KENDALL.

Letter of Chairman of Judiciary Committee of Senate to Postmaster General.

WASHINGTON, *January 20th*, 1837.

Honorable AMOS KENDALL:

SIR: Your letter of the 18th instant has been laid before the Judiciary Committee, and I am instructed by them to say, that they have placed upon the act of the last session of Congress, for the relief of William B. Stokes and others, a construction, of the correctness of which the committee entertain no doubt; and that, had any doubt existed, resort would have been had to the Attorney General of the United States, who is the proper officer to be applied to, where the legal interpretation or construction of an act of Congress may be required.

As to the allegation in your letter, that no equivalent in services has been rendered by the petitioners for the large sums awarded to them by the Solicitor, the committee have felt it to be their duty to be governed by the decision of the arbiter selected by Congress, unless fraud, or some unfair practice in procuring the decision, should be shown. It is not understood that any thing of this kind is suggested; and the fact that you have paid $120,000 under the award, forbids the idea.

If the enquiry is to be gone into by the committee, whether the services have been rendered by the petitioners for which compensation has been awarded, the committee should be clothed with larger powers than those now possessed by it. An authority to send for witnesses and papers would be indispensable. The Senate can order the investigation you request, and can give to the committee the authority necessary to render such an investigation full and satisfactory. The committee, therefore, are of opinion that your application should be made directly to that body, and not to this committee; and to enable you to do so, I am directed by the committee to make the report, which was prepared before the reception of your letter, and not to ask

the action of the Senate until you have time to present your application to that body.

(Signed) FELIX GRUNDY.

Exhibit N, referred to in plaintiff's petition, page 11.
Copied in record in complainant's exhibit I, p. 8.
Exhibit O, referred to in plaintiff's petition, p. 11.
Copied in record in complainant's exhibits I, p. —

Rule on P. M. General to show cause.

Thereupon, the court, on motion of the relators, by their said attorney, passed the following rule:

CIRCUIT COURT OF THE DISTRICT OF COLUMBIA FOR THE COUNTY OF WASHINGTON:

The United States on the relation of William B. Stokes, Richard C. Stockton, Lucius W. Stockton, and Daniel Moore,
versus
Amos Kendall, Postmaster General of the United States.

The petition of the relators, and the affidavit of Lucius W. Stockton, one of them, having been presented to the court, setting forth, in substance, that the said relators having sundry claims upon the Post Office Department of the United States, under contracts made by them with the late Postmaster General, William T. Barry, did apply to the Congress of the United States for relief in the premises; that the Congress of the United States did, at the prayer of the said parties, pass an act, which was approved on the 2d day of July, 1836, in and by which it was, among other things, provided that the Solicitor of the Treasury do examine into and adjust the said claims therein specified; and that the Postmaster General credit said contractors with whatever sum or sums of money, if any, the said Solicitor shall so decide to be due to them on account of any such service or contract; that the said Solicitor of the Treasury did, in fact, make such decision and award, and did therein and thereby find due to said relators the sum of $161,563 89, for principal and interest; that said Amos Kendall, although notified of said awards and decisions, did omit and neglect, for a considerable period of time, to carry the said award and the said act of Congress into execution, and did sometime after partially execute the same, by carrying to the credit of the said relators the sum of one hundred and twenty-two thousand one hundred and one dollars and forty-six cents, (122,101 46,) leaving of the said principal sum so awarded the sum of $39,472 47 still due, which has not been credited or paid, although requested.

That a correspondence took place between the relators or some of them and the President of the United States, and a memorial was presented, on their behalf, to the Senate of the United States, who proceeded thereupon and upon the reports of the Committee of the Ju-

diciary, passed a resolution "that the Postmaster General is fully warranted in paying, and ought to pay, to William B. Stokes and others, respectively, the full amount of the award of the Solicitor of the Treasury."

That the said Postmaster General, notwithstanding the premises and other facts detailed in said petition, still refuses, omits, and neglects to execute the said act of Congress and said award, by carrying the said sum so withheld to the credit of said petitioners. Wherefore, the petitioners pray the said court to award the United States writ of mandamus to be directed to the said Amos Kendall, Postmaster General of the United States, commanding him—

1st. That he shall fully comply with, obey, and execute the aforesaid act of Congress, of July 2, 1836, by crediting the petitioners with the full and entire sum so awarded as aforesaid, in conformity with said award and decision; and

2d. That he shall pay to said petitioners the full amount so awarded, with interest thereon, deducting only the amount which shall be justly charged or chargeable to the said memorialists against the same.

Wherefore, on motion of Richard S. Coxe, for the relators, and upon the reading of the said petition and accompanying documents, it is, this 26th day of May, 1837, ordered by the said circuit court, that the said Amos Kendall, Posmaster General of the United States, show cause, on Thursday, the first day of June next, why the said writ of mandamus should not issue, as prayed by said memorialists; and that a copy of this order be served on the said Amos Kendall, Postmaster General as aforesaid.

By order of the court.

Test: WM. BRENT, *Cl'k.*

Return of Marshal on rule.

26th May, 1837.

A copy of which said rule was made and served on the said Amos Kendall, Postmaster General as aforesaid, by the Marshal of the District of Columbia, and so certified to the court.

Whereupon, afterwards, to wit, on the seventh day of June, in the year of our Lord one thousand eight hundred and thirty-seven, the court, on motion of the said relators, by their attorney aforesaid, made the following order, to wit:

Order of Court for Mandamas Nisi.

CIRCUIT COURT, *Washington county.*

UNITED STATES, *on the relation of William B. Stokes, Richard C. Stockton, Lucius W. Stockton, and Daniel Moore,* vs. AMOS KENDALL, *Postmaster General of the United States.*	On motion for Mandamus, &c.

It having been made to appear to this court that the said William

B. Stokes, Richard C. Stockton, Lucius W. Stockton, and Daniel Moore, claimed to be credited to certain credits and allowances on their several contracts for the transportation of the mail of the United States; that the Congress of the United States passed a certain act, which was approved by the President of the United States on the 2d day of July, 1836, in and by which it was, among other things, *Provided*, That the Solicitor of the Trearury was authorized and directed to settle and adjust the claims of the said mail contractors for certain services performed by them, as contractors, for carrying the mail under and by virtue of certain contracts therefor, by them alleged to have been made, and entered into with them, by William T Barry, late Postmaster General of the United States, and for this purpose to inquire into and determine the equity of the claims of them, or any of them, for, or on account of, any contract, or additional contract, with the said Postmaster General, on which their pay may have been suspended by the present Postmaster General; and to make them such allowances therefor, as upon a full examination of all the evidence may seem right, according to the principles of equity; and that the Postmaster General be, and he is hereby, directed to credit such mail contractors with whatever sum or sums of money, if any, the said Solicitor shall decide to bedue to them, for, or on account of, any such service or contract; that, after the passage of the said act of Congress, Virgil Maxcy, being the Solicitor of the Treasury, did, in pursuance and execution of the same, proceed to examine and adjust the claims of the said parties as he was therein and thereby authorized and directed; that on the 12th and 23d days of November, 1836, he did make out and transmit to the said Amos Kendall, the said Postmaster General as aforesaid, his award and decision upon the claims of the said mail contractors; and that said Solicitor of the Treasury did, on or about the 26th day of December, 1836, make out and report to the Congress of the United States the law and the facts upon which his decision had been founded. And further, that the said mail contractors thereby became, and were entitled to have the sum of one hundred and sixty-one thousand five hundred and sixty-three dollars eighty-nine cents, carried to their credit by the said Amos Kendall, Postmaster General as aforesaid; but that he, the said Amos, although fully notified of the premises, and after a considerable delay has only so far obeyed and carried into execution the said act of Congress, and said award and decision, as to credit the said parties with the sum of $122,101 46; and that he has, from that time, refused, and does still refuse, omit, and neglect to pay or credit them with the residue of said sum so awarded and decided to be due to them, being the sum of $39,462 43.

And, whereas, the said William B. Stokes, Richard C. Stockton, Lucius W. Stockton, and Daniel Moore, by their counsel, did present to this court their petition, setting forth, among other things, the premises, and praying said court to award and direct the United States writ of mandamus to issue, to be directed to the said Amos Kendall, Postmaster General as aforesaid, commanding him, that he fully comply with, obey, and execute the aforesaid act of Congress, of July

2d, 1836, by crediting said mail contractors with the full and entire sum so awarded in their favor by the Solicitor of the Treasury as aforesaid, in conformity with said award and decision; and that he pay to the said mail contractors the full amount, so awarded, with interest, deducting only the amount which shall be justly charged or chargeable to the said mail contractors against the same. And, whereas, the said circuit court, upon a full consideration of the said petition, and the documents thereto annexed, did order and direct that the said Amos Kendall should show cause, if any he had, on the 1st day of June, instant, why the said United States writ of mandamus should not issue as prayed; which order was duly served on the said Amos Kendall, Postmaster General as aforesaid, on the 26th day of May, 1837. And, whereas, the said Amos Kendall, Postmaster General as aforesaid, did not appear on the day mentioned in said rule, and did not show, and has not shown, any good and sufficient cause against the granting the prayer of said petitioners. And, whereas, the said circuit court, upon a full consideration of the premises, and after argument by the counsel of said petitioners and relators, was and is of opinion that a writ of mandamus should issue, to be directed to the said Amos Kendall, Postmaster General as aforesaid, commanding him, that without delay, and immediately on the receipt of the same, he, the said Amos Kendall, Postmaster General as aforesaid, should fully comply with, obey, and execute, on his part, the aforesaid act of Congress, by crediting said mail contractors with the full amount of money which the said Solicitor did as aforesaid decide to be due them for, and on account of, such services or contracts, according to the true intent and meaning of said award and decision.

Therefore, it is hereby ordered and directed that the said writ of mandamus do issue, commanding the said Amos Kendall, Postmaster General, that he do forthwith, and without delay, immediately upon the receipt of said writ, credit such mail contractors with the full amount of money so awarded and decided by said Solicitor of the Treasury to be due to said mail contractors, according to the true intent and meaning of said award and decision, or that he show cause to the contrary, on or before 10 o'clock A. M., on Saturday, the 10th day of June instant.

By order of the court.

Test: W. BRENT, *Clerk.*

And thereupon the mandamus nisi issued in the words following, to wit:

Writ of mandamus nisi.

DISTRICT OF COLUMBIA, *to wit:*

The United States of America to Amos Kendall, Postmaster General of the United States, Greeting:

Whereas the Congress of the United States of America did enact

and pass a certain act of Congress, which was approved by the President of the United States, on the second day of July, in the year of our Lord one thousand eight hundred and thirty-six, in and by which said act of Congress it was, among other things, enacted and provided, that the Solicitor of the Treasury be, and he is hereby, authorized and directed to settle and adjust the claims of William B. Stokes and Richard C. Stockton, of Maryland, and Lucius W. Stockton and Daniel Moore, of Pennsylvania, for extra services performed by them as contractors for carrying the mail, under and by virtue of certain contracts therefor, by them alleged to have been made, and entered into with them, by William T. Barry, late Postmaster General of the United States, and for this purpose, to inquire into, and determine the equity of the claims of them, or any of them, for, or on account of any contract or additional contract with the said Postmaster General, on which their payments may have been suspended by the present Postmaster General, and to make them such allowances therefor, as upon a full examination of all the evidence may seem right, according to the principles of equity; and that the Postmaster General be, and he is hereby, directed to credit such mail contractors with whatever sum or sums of money, if any, the said Solicitor shall so decide to be due to them, for, and on account of, any such service or contracts; and the Solicitor is hereby authorized to take testimoney, if he shall find it necessary to do so; and that he report to Congress at its next session the law and the facts upon which his decision has been founded. And, whereas, after the passage of the said act of Congress, Virgil Maxcy, esquire, being Solicitor of the Treasury, did assume upon himself the power and authority created and conferred thereby, and did proceed to execute the same on his part, and did settle and adjust the claims of the said William B. Stokes, Richard C. Stockton, Lucius W. Stockton, and Daniel Moore, as mentioned and provided in and by said act of Congress, and in pursuance of the provisions of the same; and, upon a full examination of all the evidence, did make them allowances on account of said contracts, or additional contracts, made and entered into with them by William T. Barry, late Postmaster General of the United States, and on which their pay had been suspended by yourself, then and now the Postmaster General, according to the principles of equity, and did decide, finally, that there was due to the said parties mentioned in the said act of Congress, or to some of them, upon the grounds specified in said act, on account of said services and contracts, the sum of one hundred and sixty-one thousand five hundred and sixty-three dollars eighty nine cents, and did publish and deliver his said award and decision to you, as Postmaster General of the United States, on or about the 12th and 23d days of November, in the year eighteen hundred and thirty-six; and did subsequently, to wit, on or about the 26th day of December, in the year aforesaid, in further pursuance and execution of the said act of Congress, the said Virgil Maxcy, Solicitor of the Treasury as aforesaid, did report to Congress, it being at its next session after the passage of the aforesaid act, his said award and decision, and the law and the facts upon which the same had been

founded. And, whereas, the said award and decision so made was, as aforesaid, duly notified to you as the Postmaster General of the United States, and it thereby became your duty, and by the said act of Congress you were, thereupon, required to credit said mail contractors with the sum of money which the said Solicitor had, as aforesaid, decided to be due to them for, and on account of, such services or contracts; which requirement you in part only complied with, by carrying to their credit the sum of one hundred and twenty-two thousand one hundred and one dollars and forty-six cents. And, whereas, you did omit, refuse, and neglect, and still do refuse, omit, and neglect, notwithstanding said notice and requirement to credit the said mail contractors with the residue of the said sum, amounting to thirty-nine thousand four hundred and seventy-two dollars and forty seven cents, so awarded and decided to be due to the said mail contractors. And, whereas, heretofore, to wit, at a session of the circuit court of the District of Columbia, for the county of Washington, the said circuit court, at the instance of relators, by their counsel, did grant a rule requiring you to show cause, if any you had, among other things, why a writ of mandamus from the said court should not be awarded and issued to you, commanding you fully to comply with and execute, on your part, the aforesaid act of Congress of July 2d, 1836, by crediting the said mail contractors with the full and entire sum so awarded and decided as aforesaid to be due to them by the said Solicitor of the Treasury, in conformity with the true intent and meaning of the said award and decision; which rule was served on you, on the 26th day of May, 1837. And, whereas, you have failed to appear, according to the said rule, and have not shown any cause why the said writ should not be issued as prayed. And, whereas, the said circuit court, upon consideration of the said matters, and of the arguments of counsel on the part of said relators, in this behalf, was, and is, of opinion, that you were bound to perform and execute, on your part, the said act of Congress, by crediting the said mail contractors with the full and entire sum so awarded to be due to them by the Solicitor of the Treasury, in conformity with the true intent and meaning of the said award and decision; and that a writ of mandamus should issue accordingly.

Therefore, you are hereby commanded and enjoined, that immediately after the receipt of this writ, and, without delay, you do fully comply with, obey, and execute on your part the aforesaid act of Congress, of July 2d, 1836, by crediting said mail contractors with the full and entire sum so awarded and decided, as aforesaid, to be due to them by the said Solicitor of the Treasury, according to the true intent and meaning of said award and decision, so that complaint be not again made to the said circuit court; and that you certify perfect obedience to, and due execution of, this writ to the said circuit court, on Saturday, the tenth day of June instant, or that you do, at ten o'clock of that day, show cause to the said court why you have not so done as commanded. Hereof fail not at your peril, and have you then and there this writ.

Witness, the honorable William Cranch, chief judge of our said court, the 6th day of June, in the year of our Lord one thousand eight hundred and thirty-seven.

Issued the 7th day of June, 1837.

W. BRENT, *Clerk.*

Which mandamus was served on Amos Kendall, Postmaster General of the United States, by the Marshal of the district aforesaid, and so certified to the court.

Return of Marshal.

1837, June 10th.—This being the return day of the mandamus, &c., personally appeared in court here, as well the relators aforesaid, by their attorney aforesaid, as the said Amos Kendall, Postmaster General, by F. S. Key, esquire, his attorney; and on motion of the said Amos Kendall, Postmaster General, by his attorney aforesaid, further time is given him to file his answer, &c., &c.

And this 24th day of June, in the year of our Lord one thousand eight hundred and thirty-seven aforesaid, the said Amos Kendall, Postmaster General, by his attorney aforesaid, filed in court here the following answer and exhibit, to wit:

Answer of Postmaster General to mandamus nisi.

To the honorable William Cranch, chief justice of the circuit court for the District of Columbia.

On the 7th instant the undersigned received, by the hands of the Marshal of the District of Columbia, a writ of mandamus from the circuit court of the District, commanding him to credit Messrs. Stockton and Stokes, and others, with a certain sum of money awarded to them by the Solicitor of the Treasury, by virtue of authority alleged to be vested in him by a certain act of Congress, for their relief, passed on the 2d day of July, 1836, or to show cause why he has not so done as commanded.

The undersigned is unable to persuade himself that the perfomance of the act commanded would not, under existing circumstances, involve a violation of the oath he has taken, faithfully to discharge the duties of Postmaster General, according to law, and to support the Constitution of the United States. Although his opinion of the powers and jurisdiction of this court remains unchanged, yet that respect for the tribunal which elicited his former communication, duty to himself, and the obligations he is under to vindicate and sustain the institutions of his country, impel him to present the reasons which have induced his present determination.

Before he proceeds with that exposition, he begs leave, emphatically, to disavow all intention or idea of claiming irresponsibility or immunity in the discharge of his official functions, or of shrinking from the most scrutinizing investigation, by any legitimate authority, into

his actions or his motives. It is his pride to belong to a republic where no man is free from responsibility, however high, and where none are without protection or redress, however low. As a citizen, it is his aim to perform his domestic and civil duties with strict regard to morality and law; as a public officer, it is his most anxious endeavor to discharge every duty which may be imposed upon him with fidelity and zeal; in all capacities to encounter labor with patience, and responsibility without fear. If, in the attitude he now occupies, in relation to this court, there is that which every sensitive man would wish to avoid, he is sustained by a consciousness of right, under which circumstances, cease to be painful, and, consequently, become indifferent.

With these preliminary remarks, the undersigned proceeds to give his reasons for declining obedience to the order of the court.

First Reason.

It is doubted whether, under the Constitution of the United States, [it] confers on the Judiciary Department of the Government authority to control the Executive Department in the exercise of its functions of whatsoever character.

In the division and separation of powers, the Constitution of the United States uses the following language, viz:

"All legislative powers herein granted shall be vested in a Congress of the United States." "The Executive power shall be vested in a President of the United States." "The Judicial power of the United States shall be vested in one Supreme Court, and in such inferior courts as the Congress may, from time to time, ordain and establish." It gives the President power, by and with the advice and consent of the Senate, to appoint "judges of the Supreme Court, and all other officers of the United States, whose appointments are not herein otherwise provided for, and which shall be established by law," &c., and makes it his duty to "*take care that the laws be faithfully executed.*" It is "declared that the President, Vice President, and all civil officers of the United States, shall be removed from office on impeachment for, and conviction of, treason, bribery, and other high crimes and misdemeanors." And so careful is the constitution to give the Judiciary no control over the Executive Department, that instead of subjecting Executive officers to the courts for official offences and delinquences, it constitutes a special tribunal in the Senate for their trial in all cases of impeachment.

The plan of the constitution will be more clearly understood by a brief reference to the history and nature of the Executive and Judicial powers, as they exist in Government.

In the country from which the principles of our system of Government are measurably derived, the judicial originally formed a part of the Exeeutive power. An exposition of the law is frequently necessary before it can be understandingly executed, and the judges were appointed by the King to give it. When given, he proceeded to carry it into execution. Over that execution the judges had no power,

it being effected by sheriffs, another set of officers wholly dependent on the King. To shield the subject from regal oppression, the judges were finally made independent of the King, though removable by Parliament; but the sheriffs were still left at the Monarch's will. The *expounding* functionary was rendered independent, but the execution was still left to the King.

In our system we have followed the modern English model. Our judges, after appointment, are independent of the Executive; but our District Attornies who manage prosecutions, and our Marshals, who execute the decisions, orders, and decrees of our courts, are not only appointed by the President, but hold their offices from day to day at his will. They are the instruments by which the President "takes care that the laws be faithfully executed," as expounded by the courts.

The sole constitutional function of the judges is to *expound the laws*. It is the function and duty of the Executive to *see them faithfully executed*.

The necessity of a Judiciary Department arises solely from the impracticability of so framing the laws as exactiy to fit every case which may arise in the endless diversity of human affairs. If the laws could be precisely adapted to every case, there would be no need for a judiciary to expound them. The Executive authority could proceed forthwith to carry them into execution. But most general, and some special laws, require exposition before they can be understandingly executed. This is the judicial function. It is to declare what the law is, and apply it to the case. When that is done, the proper function of the judge ceases, and that of the Executive commences. The duty of the Marshal, who is but a part of the Executive Department, is to *execute the law as thus expounded*.

Many special laws are not susceptible of any exposition. They apply directly to the case, and cannot be made plainer by any court. Nothing is needed after their passage but execution. Such are the laws which appropriate sums of money to individuals. Such are laws which require specific acts of Executive officers. The intervention of the expounding function is not necessary in these cases, because it can make them no plainer. All that is to be done is to execute them. The officers who are to perform the duties enjoined, are all made dependent on the will of the President, directly or indirectly, that he may, through his power over them, "*take care*" that each executes the laws in his appropriate sphere.

A distinction has been taken between these laws which prescribe special duties to Executive officers, and those which do not. It is said the courts may compel the execution of the duties prescribed in the former, but not those prescribed in the latter. No such distinction is to be found in the constitution. It is the duty of the President to "take care that the laws be faithfully executed"—*special* laws as well as general; but no such duty is enjoined upon the judiciary. The means furnished the President to cause the execution of the special laws, are more immediate and direct than those furnished him for the execution of the general laws. Does a special law require the head of a Department to pay a sum of money? The officer, whose

peculiar province it is to execute the law, is under the immediate eye of the President, holds office at his will, and may be removed if he refuses. So of the Comptrollers, Auditors, Treasurer, Register, Comissioners of the Land Office, of Patents, of Pensions, of Indian Affairs, and the whole corps of Executive officers, at Washington.

And the same principle embraces all the Executive officers throughout the Union. The Exeective power is *one*—one in principle, one in object. *Its object is the execution of the laws.* It is not susceptible of subdivisions and nice distinctions, as to its duties and responsibilities. To execute the laws, and *all the laws*, are its duties; and it is responsible for their faithful performance. The practical exercise of Executive power is more remote in cases which go before judicial tribunals, but it is the same in principle. The District Attornies hold their offices at the will of the President, as also do the Marshals. It is not the behest of the judge which marshal executes, but *the law* passed by Congress, which the judge has merely expounded and applied to the case. It is the *one* Executive power of the Republic, the *President of the United States*, through an officer holding office at his will, which steps in to execute the law when the judge has declared that it is, and how it applies to the case. Laws which require no exposition are executed *without the intervention of judicial power; laws which require exposition, are executed after that exposition has been given by the judicial power;* but, in both cases, the execution is, or shall be, according to the constitution, exclusively the work of the Executive.

Over cases where the law prescribes special duties to Executive officers, as such, in terms so plain as to admit of no exposition, their power does not extend. For instance: The law directs the President to cause $50,000 to be paid to a merchant whose ship has been bought for the naval service. Here no judge could expound the law more clearly than the legislature has done it. The proper function of the judiciary cannot be called into requisition, because there is no point upon which it can constitutionally act.

Nothing is to be done but to *execute the law.* The President directs the Fourth Auditor to state an account. It is revised by the Second Comptroller. The Secretary of the Navy issues a requisition for a warrant. The Secretary of the Treasury issues a warrant, and the matter passes through the offices of the First Comptroller, the Register, and Treasurer. These officers are all made dependent on the will of the President, that, through them, he may *take care that all laws are faithfully executed.*

Suppose one of them should be perverse and obstinate, and refuse to execute the law, what would be the appropriate remedy, and who should apply it? Could the merchant call upon the courts to interfere, when no expounding of the law is requisite? Or would he rather apply to the President, whose sworn constitutional duty it is to "take care that the laws be faithfully executed?" Would he not request the President to issue *his* "mandamus" to his perverse, subordinate, directing him to execute the law? and, if he still refused, to remove him from office, and give his place to some one who would do his duty. The law would thus be executed, and the citizen obtain his rights.

But suppose he goes to the Judiciary for their "mandamus," what will he ask them to do? Will he request the judge to *expound* the the law for him? That is not necessary—it is clear enough already; all he wants is the *execution* of the law. Will he ask the judges to execute the law, or to "*take care that the law be faithfully executed*"? That is an Executive function with which they have no right to interfere. Yet, what else is the object of a "mandamus," in such a case? What is it but an *Executive* measure? What else but taking the duties of the President out of his hands? What else but an assumption of a power, which by the constitution, belongs exclusively to another independent Department of the Government?

Let this doctrine be followed out, and to what will it lead? The constitution makes it the duty of the President to "commission all the officers of the United States," and the laws impose upon him many specific, as well as general duties. The heads of Departments have also many duties prescribed by law, specially, as well as general. We have Auditors to settle accounts, Comptrollers to revise them, a Treasurer to issue checks drawn upon warrants, a Register to register accounts and warrants. Commissioners of the Land Office, of Patents, of Pensions, and of Indian Affairs, all of whom have specific, as well as general duties, and all of whom have heretofore looked up to the President as their common superior, the head of Department, to which they belong, to whom they are responsible, and whose duty it is to see that each of them faithfully executes the laws in his appropriate sphere. But this doctrine gives them a new superior—a superior above the President, the highest representative of the majesty of the people in this Government—a superior which, in theory, may consign them all from the heads of Departments, down to the messengers in the offices, to the county jail, if they refuse to regard the mandate of the court in the performance of their Executive functions. Any item in an account, any specific act required by law, whether general or special, which can directly or indirectly affect a private right, (and there can scarcely be an Executive act required by law that does not,) may be made the subject of this supervisory power; and the effective and controlling Executive of this great Republic will not be the Chief Magistrate elected by the people, but the three judges of the circuit court for the District of Columbia.

But which would be the most effectual in all such cases, the *order* of the President or the *mandamus* of the judges? The President could at once accomplish the object by the obedience or removal of his subordinate. The judges have no effectual means of executing the law. They might imprison the Executive officer, but they could not remove him. Imprisonment might not accomplish the object. The court could not guide his hand, nor control his will. If he were conscientious in his refusal, or wished to appear so, no imprisonment, nor pains, nor penalties, could compel him to do an act which, in his opinion, violated his oath of office. The whole power of a court would be impotent to control an honest man. The inadequacy of the judicial process, and the ample power vested in the President, are conclusive proof that the President, and not the court, was intended to be the controlling authority in all such cases.

So far as regards their execution, no distinction is made by the constitution between special acts and general acts, between private acts and public acts. It is the duty of the President to take care that *all alike* "be faithfully executed." The Executive is an *unity*. The framers of the constitution had studied history too well to impose on their country a *divided Executive*. The Executive power was vested in a *President*. The Executive officers are his agents, for whom he is held responsible by the people, whose agent he is. The *acts of the Executive officers* are the *acts of the President*. Constitutionally, he is as responsible for them as if they were done by himself, though not morally.

So far as regards the execution of the laws, therefeore, no distinction can be maintained between the acts of the President, and those of his subordinate officers. In law, they are all acts of the President. When the Judiciary attempt to control those acts, they attempt to control the Executive power, to assume the functions of the President, to make themselves the Executive in the last resort, superior to the Executive created by the constitution, and elected by the people.

Suppose the laws require a specific act of the *President himself*, involving private rights, which he refuses to perform. The courts have as much law for issuing a mandamus against *him* as against any of his subordinates, in a like case. It is a "*case*" as much as that of which the court has already assumed jurisdiction. The President disobeys their mandamus, and they send an attachment. By whom do they send it? By a marshal holding his office at the will of the President, who can strike their process dead in his hands, by dismissing him upon the spot. This fact proves the absurdity of the power assumed. And that which the President can legally do to protect himself, he can do to protect any of his agents, being always responsible to his country for the proper exercise of his power.

But suppose the court succeed in arresting the President, and put him in the county jail, where, then, is the Supreme Executive power of this great Republic? transferred from the President's House to the City Hall—from the Chief Magistrate, elected by the people of the whole United States, to the three judges of the District of Columbia.

The arrest and imprisonment of any Executive officer as such, involves the same principles and would lead to the same consequences in a greater or less degree, according to the importance of the station held by him. It is still an attempt to control the Executive power, not by confining its head, but by tieing up its hands; or rather by forcing the hands to work, not according to the will of their constitutional head, but in obedience to the will of another department of the Government.

It is said that if the court has not this power, "an individual who may have been ruined by the refusal of an officer to perform a ministerial act positively enjoined upon him by law, will be entirely without redress." If it were even so, would it justify the court in assuming executive authority in violation of the constitution? It would but prove a defect in our institutions which it would be incumbent on

the people to repair. But it is not so. The idea that courts are the only places where wrongs of all sorts are to be redressed, and judges the only dispensors of right, is an error. When the inferior Executive officer, or even the President himself refuses to perform his Executive duties, there is an obvious mode of redress, without the interposition of the judicial authority. If a subordinate Executive officer "refuses to perform a ministerial act positively enjoined upon him by law," the injured citizen may appeal to the President, whose duty it is to "take care that the laws be faithfully executed," and has power to turn out a perverse subordinate. If the case be so very plain, the President will at once enforce an execution of the law and the citizen will have effectual redress, though "this court has not jurisdiction." If the case be not so very plain, the matter may be referred back to Congress to make it plain by further legislation, and thus the citizen would have complete redress without the aid of the court. There is a process by which the President himself can be reached for a perverse refusal to execute the laws, or take care that they be executed, and a chief magistrate, who will do his duty, put in his place.

Thus are there ample means provided by the constitution to enable the citizen to obtain his rights at the hands of the Executive, without erecting any court into a supreme controlling power over the President and the whole corps of Executive officers. Indeed, the court has not, in the constitution and laws, the means to give redress in such cases. Before they can control the President they must assume the power to appoint their own marshal and execute their own mandates. They must do more—they must proceed to the executive offices—must enter credits with their own hands—must issue warrants, and finally, with their own hands, take the money out of the Treasury.

The very case before the court illustrates the theory of the constitution. The Postmaster General refused to execute a part of the Solicitor's award, because he believed it contrary to law. Where did the relators first look for redress? Not to the court, but to the President. The late President deemed the case a proper one for another application to Congress for further legislation, and refused to compel an execution of the award. The relators went to one House of Congress and procured the passage of a resolution in their favor, but no legislation. The case was then again pressed upon the late President, whose views of it remained unchanged. It was afterwards pressed on the present President who considered the disposition made of it by his predecessor as final, so far as the Executive was concerned, unless there should be further legislation. If the President on either of these three occasions had looked upon the law as clearly and imperatively commanding the payment of the money, he would have taken care to see it faithfully executed, and the relators would have had complete redress. If they had procured the passage of an explanatory act or joints resolution through both Houses of Congress, sustaining the construction of law, or requiring payment of the balance of the award, their redress would have been complete.

These obvious constitutional and legal measures were resorted to

by them, and it is only when they fail to obtain the interpretation of legitimate authority, that they apply to a court to erect itself into a tribunal of appeal from another independent department of the Government.

Whether sound or not, the views here expressed are not peculiar. Mr. Jefferson and Mr. Madison acted upon them when the former held the office of President, and the latter that of Secretary of State. Mr. Jefferson has left on record his views of the case of Marbury vs. Madison, now relied on by the court to sustain their claim to jurisdiction in this case. The following is a letter addressed by him to George Hay, prosecuting attorney in the case of Aaron Burr, viz.

WASHINGTON, *June 2d*, 1807.

TO GEORGE HAY:

DEAR SIR: While Burr's case is depending before the court, I will trouble you from time to time with what occurs to me. I observe the case of Marbury vs. Madison has been cited, and I think it material to stop, at the threshold, the citing that case as authority and to have it denied to be law.

1. Because the judges, in the outset, disclaimed all cognizance of the case, although they then went on to say what would have been their opinion had they had cognizance of it. This then was confessedly an extrajudicial opinion and as such of no authority.

2. Because, had it been judicially pronounced, it would have been against law; for, to a commission, a deed, a bond, *delivery* is essential to give validity. Until, therefore, the commission is delivered out of the hands of the Executive and his agents, it is not his deed. He may withhold or cancel it at pleasure, as he might his private deed in the same situation. The constitution intended that the three great branches of the Government should be co-ordinate, and independent of each other. As to acts, therefore, which are to be done by either, it has given no control to another branch. A judge, I presume, cannot sit on a bench without a commission, or a record of a commission; and the constitution having given to the judiciary branches no means of compelling the Eecutive either to *deliver* a commission, or to make a record of it, shows that it did not intend to give the judiciary that control over the Executive, but that it should remain in the power of the latter to do it or not. Where different branches have to act in their respective lines finally, and without appeal, under any law, they may give to it different and opposite constructions Thus, in the case of William Smith, the House of Representatives determined he was a citizen, and in the case of William Duane, (precisely the same in every material circumstance,) the judges determined he was no citizen. In the case of Callender and others, the judges determined the sedition act was valid under the constitution, and exercised their regular powers of sentencing them to fine and imprisonment. But the Executive determined that the sedition act was a nulity under the

constitution, and exercised his regular power of prohibiting the execution of the sentence, or rather of executing the real law, which protected the acts of the defendants. From these different constructions of the same act by different branches less mischief arises than from giving to any one of them a control over the others. The Executive and Senate act on the construction that, until delivery from the Executive Department, a commission is in the possession and within their rightful power; and in cases of commissions not revokable at will, where, after the Senate's approbation and the President's signing and sealing, new information of the unfitness of the person has come to hand before the *delivery* of the commission, new nominations have been made and approved, and new commissions have issued.

"On this construction I have hitherto acted. On this I shall ever act and maintain it with the powers of the Government against any control which may be attempted by the judges in subversion of the independence of the Executive and Senate within their peculiar department. I presume, therefore, that in a case where our decision is by the constitution the supreme one, and that which can be carried into effect, it is the constitutionally authoritative one, and that *that* by the judges was *coram non judice*, and unauthoritative, because it cannot be carried into effect. I have long wished for a proper occasion to have the gratuitous opinion in Marbury vs. Madison brought before the public, and denounced as not law; and I think the present a fortunate one, because it occupies such a place in the public attention. I should be glad, therefore, if, in noticing that case, you could take occasion to express the determination of the Executive, that the doctrines of that case were given extra-judicially and against law, and that there reverse will be rule of action with the Executive. If this opinion should not be your own, I wish it to be expressed merely as that of the Executive. If it is your own also, you would of course give to the argument such a developement, as a case incidental only might render proper.

I salute you with friendship and respect,

TH: JEFFERSON."

Mr. Jefferson was still President at the time the letter was written. He declares that "*the constitution intended that the three great branches of the Government should be co-ordinate and independent of each other;*" that "*as to the acts which are to be done by either, it has given no control to another branch;*" that "*the doctrines of that case were given extra-judicially and against law,*" that "*their reverse will be the rule of action with the Executive,*" and that he would "*maintain*" his construction of the constitution "*with the powers of the Government against any control which may be attempted by the judges in subversion of the independence of the Executive,*" *&c.*

In a letter to Judge Roane, dated September 6, 1819, Mr. Jefferson adverts to this case, and the principles involved in it, in the following terms, viz.

"In the case of Marbury and Madison, the federal judges declared that commissions signed and sealed by the President were valid, although not delivered.

"I deemed delivery essential to complete a deed which, as long as it remains in the hands of the party, is as yet no deed, it is *posse* only, but not *in esse*; and I withheld delivery of the commissions. *They cannot issue a mandamus to the President, or legislature, or any of their officers, the constitution controlling the common law in this particular.*"

Again, as late as June 12th, 1823, in a letter to Judge Johnson, Mr. Jefferson speaks thus of this case, viz.

"This practice of Judge Marshal of travelling out of his case, to describe what the law would be in a moot case, not before the court, is very irregular, and very censurable. I recollect another instance, and the more particularly perhaps, because it, in some measure, bore on myself. Among the midnight appointments of Mr. Adams, were commissions to some federal justices of the peace, for Alexandria.

"These were signed and sealed by him, but not delivered. I found them on the table of the Department of State, on my entrance into office, and I forbade their delivery. Marbury, named in one of them, applied to the Supreme Court for a mandamus to the Secretary of State, (Mr. Madison,) to deliver the commission intended for him. The court determined at once that, being an original process, they had no cognizance of it, and there the question before them was ended. But the Chief Justice went on to lay down what the law would be, had they jurisdiction of the case, to wit: That they should award the delivery. The object was, clearly, to instruct any other court having the jurisdiction, what they should do if Marbury should apply to them.

"Besides the impropriety of this gratuitous interference, could any thing exceed the perversion of law? For, if there is any principle of law never yet contradicted, it is, that delivery is one of the essentials to the validity of a deed. Although signed and sealed, yet as long as it remains in the hands of the party himself, it is in *fieri* only; it is not a deed, and can be made so only by its delivery. In the hands of a third person it may be made an *escrow*. But, whatever it is in the Executive offices, is certainly deemed to be in the hands of the President; and, in this case, was actually in my hands, because, when I countermanded them there was as yet no Secretary of State. Yet, this case of Marbury and Madison is continually cited by bench and bar as if it were settled law, without any animadversion of its being merely an *obiter* dissertation of the Chief Justice."

Mr. Jefferson even denied the power of the courts to compel the attendance of the President or Heads of Departments as witnesses in suits at law or criminal prosecutions at whatever distance, on the ground that their constitutional duties in the service of the people of the United States were paramount to all others. When, in the case of Smith and Ogden, in New York, a *subpœna* was issued to some of the Heads of Departments, they were directed by him to attend to their official duties and disregard it. When the order of the President was stated in court as the ground of disobedience, a motion was made for an attachment on the ground that it was insufficient, but the motion failed upon an equal division of the court.

In the case of Aaron Burr a *subpœna* was issued by the court for the President himself, which he disregarded and returned. The following are his remarks upon it, in letters, to the District Attorney, viz.

"The leading principle of our Constitution is the independence of the Legislature, Executive, and Judiciary, of each other, and none are more jealous of this than the judiciary. But, would the Executive be independent of the judiciary if he were subject to the *commands* of the latter, and to imprisonment for disobedience, if the several courts could bandy him from pillar to post; keep him constantly trudging from north to south, from east to west, and withdraw him entirely from his constitutional duties? The intention of the Constitution, that each branch should be independent of the other, is further manifested by the means it has furnished to each to protect itself from enterprises of force attempted on them by the others, and to none has it given more effectual or diversified means than to the Executive."

"I received late last night your favor of the day before, and now re-enclose you the subpœna as I do not believe that the district courts have a power of commanding the Executive Government to abandon superior duties and attend on them, at whatever distance. I am unwilling, by any notice of the *subpœna*, to set a precedent which might sanction a proceeding so preposterous."

If the courts cannot take the Executive officers from their public duties, even to testify in court in criminal cases, much less can they, at the instance of citizens in pursuit of private rights, subject them to mandamus and attachment.

These authorities are sufficient to show, that the doctrine laid down by the Chief Justice, in the case of Marbury vs. Madison, never was recognized as law by the Executive authority. They will also screen the undersigned from the imputation of assuming any new ground when he doubts whether this court, or any other, can "issue a mandamus to the President or legislature, *or any of their officers*—the Constitution controlling the common law in this particular."

All this reasoning and these deductions, the undersigned begs may be understood as applicable solely to the public character and acts of Executive officers, and not to their character as citizens or to their private transactions.

Second Reason.

If, according to the Constitution, the circuit court for the District of Columbia might be clothed by law to issue a mandamus in such a case, no such power has been conferred upon them by the act of Congress.

The undersigned is spared the labor of investigating and illustrating this position by the clear, and he thinks, conclusive opinion of the Attorney General, which he transmits herewith, and requests that it may be considered a part of this letter, (copied in page 331.)

That opinion reviews the opinion of the circuit court, as delivered by Chief Justice Cranch, and published in the National Intelligencer, and maintains the following positions:

1. That the argument of the court, in favor of the jurisdiction claimed by them, is founded on inferences from the language of Judge Johnson, in the case of *McIntyre vs. Wood*, which inferences were repudiated by the same judge, and by the judgment of the court in a subsequent case.

2. That there is no substantial difference between the words of the judiciary act of 1789, which the Supreme Court have twice decided do *not* give the other circuit courts power to issue a mandamus to an Executive officer, and the words of the 5th section of the act concerning the District of Columbia, on which the circuit court rely; and that the jurisdiction of the latter, is, therefore, in this respect, no greater than that of the other courts.

3. That no power is to be derived from the act of the 13th February, 1801, because that act was repealed in 1802, without any exception as to the circuit court of this District.

4. That even, if the act of Congress concerning this court, had given to it, in express terms, a jurisdiction to issue writs of mandamus to an Executive officer, to compel him to perform an official act, no such jurisdiction could be exercised consistently with the provisions of the Constitution, because such a jurisdiction would be substantially an exercise of Executive power, which cannot be taken from the President, in whom the Constitution has vested it.

5. That the Postmaster General is an Executive officer, and equally independent with the other heads of the Executive Departments of any control in the exercise of his official duties by the judiciary.

Third Reason.

If, by the Constitution, Congress can clothe the courts with authority to issue writs of mandamus against Executive officers as such; and, if they have vested the general power in this court by law, this is not a case in which that power can be lawfully exercised.

1. It seems to be conceded that a writ of mandamus will not be to compel any one to do an act, in relation to the performance of which he has any discretion; and to bring this case with that principle, the court say, "the duty of the Postmaster General, under that act, is clear and absolute, leaving him no discretion." Is this so?

The act does not require the Postmaster General to credit or pay any specific amount. It does not absolutely require him to do any specific act whatever. Whether he would be called upon to credit much or little, or nothing at all, was altogether contingent, depending on the Solicitor's award. It was not like a law directing specifically and absolutely the payment of a sum of money, or the performance of a ministerial act, where the law is the only guide. It was necessary for him, in this case, to look at the law and at the Solicitor's award. Of necessity, he must compare them together to ascertain what it was his duty to do.

Now, in making that comparison, and acting upon the result, has he no discretion? The authority of the Solicitor, by the words of the law, was to settle and adjust "the claims of relators 'for extra services' under certain contracts made with them by W. T. Barry," &c., to inquire into, and determine the equity of their claims *for, or on account of, any contract*" with the said Postmaster General, "on which their pay had been suspended by the *present Postmaster General*," and to make them such allowances, &c. The duty of the Postmaster General is prescribed in the following words:

"And that the Postmaster General be, and he is hereby, directed to credit such mail contractors with whatever sums of money, if any, the said Solicitor shall so decide to be due to them "*for, or on account of, any such service or contract.*"

The Postmaster General was not required to credit the contractors with *all the Solicitor might award to them*, but only so much as he might decide to be due, "*for, or on account of, such service or contract.*" What "service or contract?"

Why, the "service or contract" described in the preceding part of the act, "*extra service*," a "contract" *with Mr. Barry*—a contract "*on which the pay had been suspended by the present Postmaster General.*" It is such allowances, and such only, that the Postmaster General is directed to credit.

Has he no power to examine and decide whether the allowances are of this character or not? Must he not see whether they are for, or on account of, any such service or contract, or not. If he have no power to look into that point, why are the words attached to the sentence, which prescribe his duty?

Why was he not directed absolutely to credit "*whatever sums of money, if any, the Solicitor shall decide to be due to them?*" But one answer can be given. It was the purpose of Congress to limit the power of the Postmaster General, to *credit and pay* as well as that of the Solicitor *to allow;* and, after defining the claims which the latter was authorized to allow, they limited, to the same claims, the power of the former to pay. He was directed to pay the sums allowed "*for, or on account of, any such service or contract,*" and nothing more.

Again, there are several provisoes to the act limiting the power of the Solicitor. One of them is as follows: "Provided, the said Solicitor is not authorized to make any allowance" "for any suspension or withholding of money as aforesaid, for allowances or overpayments made as aforesaid, on the route from Baltimore to Washington, under the contract of 1827." If, instead of 1827, the year 1831 had been used in this proviso, it would have covered a part of the allowances embraced in the award. Had it done so, and had the award embraced that or any other allowance prohibited by the provisoes, would it not have been the duty of the Postmaster General to refuse the credit and payment? It cannot be doubted. But how could he ascertain whether the allowance was prohibited by the proviso or not? Could he do it in any other way than by examining the allowance and comparing it with the proviso? If, in his opinion, it were pro-

hibited, he would refuse to pay it; if not, he would pay it. And is there not *discretion* here? May he not pay, or refuse to pay, according to his opinion of the power of the Solicitor to make the allowance?

On these points there can be no doubt that the Postmaster General *has a discretion*. But what is the difference between his right to determine whether the Solicitor has transcended his power on specific points, or in his award generally? Had he not a discretion to refuse to pay the whole award, or any part of it, if he honestly believed it contrary to law? If, on looking at the law and the award, he found that the Solicitor had departed from his authority altogether, it cannot be doubted that he had a right under the law, and that it would have been his duty to decline carrying it into effect.

This is not a case, therefore, where a specific duty is enjoined by law, in the peformance of which there is no discretion, such as the payment of a definite sum of money, the registering of a certificate, or the recording of a patent, and consequently it is not a proper case for a mandamus.

It seems to be conceded that, under existing laws, a writ of mandamus can be issued by a court only as a means of *exercising* its jurisdiction, and not for the purpose of *obtaining* jurisdiction.

Let us apply the principle to this case. The jurisdiction of every court must be original or appellate. Original jurisdiction is where, by authority of the constitution and laws, proceedings are originated in the court in the first instance. Appellate jurisdiction is where, by authority of the same constitution and laws, a case is taken out of a lower tribunal into a higher, with a view to the revision of the proceedings of an inferior court.

In this case, the circuit court of the District had no original jurisdiction to adjudicate upon the claims of the contractors. There was no mode known to the laws by which they could prosecute those claims in any court whatsoever. Congress created a special tribunal for that purpose. They made the Solicitor of the Treasury a chancellor for the special object, and clothed him with power to take evidence and adjudicate upon the claims of the contractors. No other court on earth could have entertained this case.

Nor was any appeal from the decision of this special court provided for by the law which created it. Neither the circuit court of this District, nor the Supreme Court of the United States, nor any other judicial tribunal, had power to bring up the case from the Solicitor of the Treasury, either before or after his award, and revise his proceedings.

No judge could take from, or add to, the amount of his award, nor has any judge the legal power to say whether that officer decided according to law or against law. The Solicitor's power in this case was equal to that conferred on the Supreme Court of the United States, in cases subjected to its jurisdiction, and *above* that of the circuit court of the District of Columbia, from which there is an appeal. The Solicitor had as much power under the law, which gave him jurisdiction, to issue a mandamus to bring before him, for consideration or revi-

sion a case acted on in the district court or the Supreme Court, as either of them has to issue a mandamus to bring before them for consideration or revision a case decided in his court; and he has as much right to interpose by a mandamus to execute their judgment, as they his.

How, then, do the circuit court get jurisdiction in this case?

Not by the law; for the law gives them none, either original or appellate. They *obtain it by the mandamus*, and by that only.

Is it said that they do not claim jurisdiction to enquire into and revise the Solicitor's award? What, then, does their jurisdiction amount to? What "*case*" is this, where the jurisdiction is not to enquire into, to revise, to adjudge, but merely to execute? In the ordinary routine of judicial proceeding, the "*case*" comes first, the "*suit*" follows, and "*judgment*" closes the rear. Here it is not a "*case*," nor a "*suit*" of which the court takes cognizance, but a "*judgment.*" It is the judgment and award of another independent court, upon the proceedings of which the law gives neither resort nor appeal to the district court.

And, if the court do not intend to look into the award of the Solicitor, to ascertain whether it be according to law or against law, what do they mean by calling upon the Postmaster General to give his reasons for not carrying it into execution? If they mean any thing by such a call, it must be that they will *consider* the reasons which may be adduced by him, and *decide* whether they be sufficient or not. Suppose the Postmaster General were to allege that the Solicitor had considered and allowed claims which he was not authorized to allow by the act of Congress from which he derived his authority? If this were true, it would certainly be a good reason for not paying the award. But could the circuit court *inquire into their truth*? Whence do they derive the power to enquire or decide whether the Solicitor allowed too much or too little?—whether he adhered to the law or transcended the law?—whether he awarded to the claimants a just compensation for services actually rendered, or heaped upon them tens and hundreds of thousands without shadow of contracts or pretence of service? Nothing would seem more plain than that the court have no power to call for books and papers, or summon witnesses, or consider statements, with a view of deciding whether the awards of the Solicitor be right or wrong. If they have no such power, it is palpable that they cannot make any examinations and come to any decision, which can exhonerate the Postmaster General from executing the award, however illegal or monstrous may be the allowance which it sanctions.

Is not this absence of power, to *consider* that which may be a good reason for the Postmaster General's refusal to execute the award, the strongest possible proof that the court have no authority to institute their present proceedings? It will be admitted by all, that if the Postmaster General could show that the award was illegal or corrupt, it would be a good excuse for not carrying it into effect until it could be revised by some superior tribunal. But this court, not being clothed by law with power to consider those points, has no authority to judge

of the legality or reasonableness of the Postmaster General's excuses, although they may be such as not only to justify him, but to entitle him to commendation.

No man will deny that cases may and do arise in which an Executive officer is perfectly justifiable in refusing to perform a specific act required of him by law. In these cases he is responsible to his superior and to Congress, but not to the court. If the Postmaster General were directed by express law to pay $50,000 to a contractor, and should, before doing so, discover that the passage of the act of Congress had been procured by false and fabricated testimony, it would be his duty to refuse payment until the whole subject could be again brought under the revision of Congress; yet the law might be plain and peremptory in its terms, leaving him no discretion. Must not this court, upon the principles laid down by them, grant a mandamus to the claimant? Could they, in such a proceeding, inquire into and revise the act of Congress, or would they peremptorily order and forcibly compel the Postmaster General to execute the law, the fraud notwithstanding. If he had no "discretion," and they no power of revision, such must be their decision.

Hence it is inferred, that the court has no jurisdiction of this case in law, and can only obtain what they may exercise by their mandamus—a proof that a writ of mandamus will not lie in such a case.

Fourth reason.

The Court have ordered the Postmaster General to perform a legal impossibility.

A mandamus is a command to do a specific act. The specific act ordered to be done in this case is to credit the relators with the full amount of the Solicitor's award. A credit can only be given by an entry upon some book, in which their accounts are lawfully kept.

No accounts are kept with contractors in the Post Office Department, nor has the Postmaster General the custody or control of the books in which they are kept. All the accounts of the Post Office Department are kept in the Treasury Department, by the Auditor, created for that purpose by the act of July 2d, 1836. That officer is appointed by the President and Senate; and so far is he from being dependent on the Postmaster General, that his clerks are appointed by the Secretary of the Treasury. To this office have been transferred, long since, all the accounts, and the books connected with them, formerly kept by the Postmaster General.

By adverting to the fact, that the act for the relief of Messrs. Stockton and Stokes, &c., and that to change the organization of the Post Office Department, passed on the same day, the occasion of this practical discrepancy between them will be understood. The former was drawn with reference to the organization of the Department at the time of its introduction into Congress. Then the Postmaster General kept the accounts, and the entries in the books were *his* entries. He had the legal power and authority to give a credit to the contractors in this

case. But this power and authority was taken from him by another act on the day the act for their relief passed. That the act now in question was not altered so as to accommodate it to the change, and require the credit to be given by the new Auditor instead of the Postmaster General, was doubtless an inadvertence; but it is one which the legislative authority alone can correct. As the law stands, the Postmaster General has just as much authority to make entries in the books of the 2d, 3d, and 4th Auditors, as he has in those of the Auditor created by the act of 1836.

Hence, the court will perceive that they have ordered the Postmaster General to do that which he cannot lawfully do—to enter a credit or credits on books, of which he has neither the custody or control.

These views the undersigned submits to the court, with much confidence in their soundness. He thinks it is shown—

1. That it is the function of the Executive "to take care that the laws," special as well as general, "be faithfully executed;" and that of the judiciary to expound such as require it; that to the President of the United States, and not to the courts of justice, belongs the duty of directing and controlling all Executive officers, in the performance of their official duties; and that when the courts interpose to control them, they assume an Executive function, invade the province of the President, and subvert the constitutional assignment of powers.

2. That Congress have not conferred, or attempted to confer, on the circuit court for the District of Columbia, authority to issue a writ of mandamus for the purpose of controlling Executive officers in the performance of their duties, whether general or specific; that the Postmaster General is an Executive officer; that, in the matter upon which this proceeding has originated, he has acted in that capacity; and that he is not lawfully controllable therein by a writ of mandamus.

3. That, in the case before the court, the Postmaster General had a clear and undoubted discretion, in the exercise of which he is amenable to no judicial tribunal; and that the court, having no jurisdiction of the matter in question, either original or appellate, cannot lawfully court and obtain it by a mandamus.

4. That the court have ordered the Postmaster General to do that which he has no lawful power to do, not having official custody or control of the books in which the credits are commanded to be entered.

In addition to these persuasive considerations, it cannot be forgotten that the power now asserted has been slumbering from the birth of the constitution, and now, almost half a century from the organization of the Government, is for the first time called into requisition. How was it that Marbury, after his right to his commission was so strongly asserted by the Supreme Court, did not bethink himself of a resort for redress to the circuit court for the District of Columbia? Why is it that the numberless claimants, whose accounts have been rejected at the Treasury, though asserted by them to be clearly warranted by law, have not applied to this court for its mandamus to compel the Auditors and Register to give them credit upon their books? Why did not the Bank of the United States, instead of agitating the

country and thundering in the capitol, apply to this court for its mandamus, to compel the Secretary of the Treasury to restore the public deposites, which, it was alleged, had been removed from it in contempt of law and in violation of the constitution? Have none of these occasions been sufficient to rouse this giant power from its enduring slumber? Are its mighty arms to be flung aloft for the first time in vindication of post office extra allowances, of doubtful legality and undoubted enormity, which have already been denounced by Congress and contemned by the nation?

The undersigned desists from a theme on which it is not pleasant to dwell. It has been his studied effort to avoid, as far as possible, expressions calculated to wound sensibility or create excitement. The voice of reason alone is worthy of a subject so comprehensive and so grave. If a sentence or a word is to be found in this paper which can justly be construed as disrespectful to the court, or personally reproachful to any one, it has escaped through inadvertence, and conveys a meaning which was not intended.

AMOS KENDALL,
Postmaster General.

June 24, 1837.

Opinion of Attorney General.

Opinion of the Attorney General of the United States, referred to in defendant's answer, page 314.

ATTORNEY GENERAL'S OFFICE,
June 19th, 1837.

SIR: I have had the honor to receive your letter of the 7th instant, enclosing a printed copy of the opinion, delivered by the chief judge of the circuit court of the District of Columbia for the county of Washington, upon the application of William B. Stokes and others for a writ of mandamus, to be directed to the Postmaster General of the United States, and requesting me to examine it & inform you whether I find any thing therein to change the opinion heretofore expressed by me relative to the jurisdiction of the court over the matter in question.

Pursuant to this request, I have examined the papers referred to me with the attention and respect due to its author, and to the court of which he is the organ; but, after the fullest consideration which I have been able to give to the arguments contained in it, I still adhere to the opinion, that the court had no power to issue the writ in question.

The case proposed by you, in your communication of the 29th ultimo, and now presented, relates to the power of the circuit court of this District to issue a *mandamus* to the Postmaster General, an *Executive officer of the United States*, for the purpose of compelling him to perform an official act, alleged to have been enjoined upon him by a special act of Congress, passed for the relief of the parties applying for the writ. This act treats exclusively of certain claims depending

in the Post Office Department, and growing out of contracts with the Department. It refers those claims to the Solicitor of the Treasury for settlement; and it directs the Postmaster General to credit the contractors with whatever sum of money, if any, the Solicitor shall decide to be due them. The duty imposed by this law is, therefore, in every sense, an official duty; it relates to the business of his Department; it is imposed on him by his name of office.

The Solicitor of the Treasury has made an award, by which he decides that certain sums of money are due to the contractors, and the Postmaster General has credited them with a part of these sums; but, for reasons satisfactory to his own judgment and sense of duty, has refused to credit the balance, until directed so to do by a further act of Congress. The contractors have applied to the late President of the United States to take order, by virtue of his constitutional duty, to see the laws faithfully executed for crediting the balance; *but, being satisfied with the course of the* Postmaster General, he declined making any such order, and referred the parties to Congress for further legislative direction.

The like application has been made to the present Chief Magistrate, who deemed it inexpedient to interfere with the disposition of the subject made by his predecessor; and the parties now apply to the circuit court of this District for an order, in the form of a writ of a *mandamus*, to the Postmaster General to credit and pay the balance of the Solicitor's award, on the ground that this is a mere ministerial act, to the performance of which the applicants have a fixed legal right under the act of Congress, as it now stands, and for which they have no other adequate legal remedy. The court has so far adopted these views as to issue an *alternative* mandamus, commanding the Postmaster General to give the *credit* applied for, or to show cause why he has not done so; but it has reserved the question, whether the *mandamus* shall issue to command the *payment* of the balance for further consideration, when the result of the first writ shall have been ascertained.

In my former communication it was shown that, according to the decisions of the Supreme Court of the United States, in the case of McIntyre vs. Wood, (7 Cranch, 504,) and McClung vs. Silliman, (6 Wheaton, 598,) the circuit courts of the United States, out of the District of Columbia, have no jurisdiction, under the laws now in force, to issue a writ of mandamus to an officer of the Executive Departments; and the opinion was expressed, that the acts of Congress organizing the circuit court of this District, and regulating its jurisdiction, though they conferred some powers not delegated to the other circuit courts, did not, in express terms, or by any general grant of power, authorize it to issue a writ of mandamus to an Executive officer of the United States, and therefore, that its jurisdiction, in this respect, was the same with that of the other circuit courts.

The character and effect of the decision referred to, as to the other circuit courts, and the necessity of proving, before the writ applied for can be issued by the circuit court of this District, that Congress have conferred on it a jurisdiction, in this particular, not possessed by those

courts, and fully admitted in the opinion before me; and the court would doubtless have come to the like conclusion with me, had it taken the like view of the acts of Congress regulating its jurisdiction. The opinion maintains that the power and jurisdiction conferred on this court, are much more comprehensive than those possessed by the other circuit courts, and sufficiently so to include the power in question. To establish this, a comparison is instituted between the acts of Congress relative to these courts; and the result of this comparison, aided by inferences and reasonings thereon, drawn from the language of the Supreme Court in the cases referred to, is supposed to be in favor of the jurisdiction claimed by this court.

The result, in my opinion, is directly the reverse. The power and jurisdiction of the ordinary circuit courts of the United States, so far as regards this subject, depends on the following clauses of the 11th and 14th sections of the Judiciary act of 1789.

The 11th section provides, "that the circuit courts shall have original cognizance, concurrent with the courts of the several States, of all *suits* of a civil nature, at common law or in equity, where the matter in dispute exceeds, exclusive of costs, the sum or value of five hundred dollars, and the United States are plaintiffs or petitioners, or an alien is a party, or the dispute is between the citizen of a State where the suit is brought and a citizen of another State."

The 14th section enacts, "that all the before mentioned courts of the United States shall have power to issue writs of *scire facias*, *habeas corpus*, and all *other writs* not specially provided for by statute, *which may be necessary for the exercise of their respective jurisdictions, and agreeable to the principles and usages of law.*"

On these provisions the Supreme Court held, in the case of *McIntyre vs. Wood*, (7 Cranch, 504,) that the circuit court of Ohio did not possess the powers to issue a *mandamus* to the Register of the Land Office. The power of the circuit courts, under the general words of the 14th section, to issue writs of *mandamus* in some cases, was not denied; but it was held that the power was confined, exclusively, to cases in which the writ might "*be necessary to the exercise of their jurisdiction.*" By this was meant, as explained in the subsequent case of McClung vs. Silliman, (6 Wheaton, 598,) that the mandamus can only be issued "in cases where the jurisdiction *already exists*, and not where it is to be *courted or acquired by means of the writ proposed to be sued out.*"

The powers and jurisdiction of the circuit court of the District of Columbia, so far as regards the present question, and conferred by the 3d and 5th sections of the act "concerning the District of Columbia," approved February 29th, 1801. The material part of the 3d section is as follows: That there shall be a court in the said District, which shall be called the circuit court of the District of Columbia, and the said court and the judges thereof shall have all the powers vested in the circuit courts and the judges of the circuit courts of the United States.

The 5th section is in the following words:

"That the said court (the circuit court of the District of Columbia)

shall have cognizance of all crimes and offences committed within the said District, and of all cases in law and equity between parties, both or either of which shall be resident, or shall be found within the said District; and also of all actions or suits of a civil nature, at common law or in equity, in which the United States shall be plaintiffs or complainants; and of all seizures on land or water, and all penalties and forfeitures made, arising or accruing under the laws of the United States."

On the latter of these sections (the 5th) Judge Cranch holds, that it confers on the circuit court of the District of Columbia a jurisdiction not given to the other circuit courts, which may be enforced by the writ of *mandamus*, whenever such a writ is necessary to the exercise of that jurisdiction. This view of the case appears to have been suggested by the following remarks of Mr. Justice Johnson, in the case of McIntyre vs. Wood. "Had the 11th section of the judiciary act covered the *whole ground of the constitution*, there would be much reason for exercising this power, (the power of issuing writs of mandamus,) in many cases wherein some ministerial act is necessary to the completion of an individual right, arising under the laws of the United States; and the 14th section of the same act would sanction the issuing of the writ for such a purpose." "But although the judicial power of the United States extends to cases arising under the laws of the United States, the legislature have not thought proper to delegate the exercise of that power to its circuit courts, except in certain special cases."

In order to bring the case within these remarks, Judge Cranch argues that the 5th section, above quoted, *has covered the whole ground of the Constitution of the United States*, and much more, except as to certain cases not material to the present discussion, and that, with such exception, the circuit court of the District of Columbia has cognizance of *all cases* in law and equity, *whether arising under the Constitution or laws of the United States*, or under the adopted laws of Virginia or Maryland, *with the only condition that one of the parties shall be resident or found within the District*, and that the circuit court of the District of Columbia is therefore "*in that condition*" of which Mr. Justice Johnson Speaks. He also argues, chiefly on the authority of a part of the opinion of Chief Justice Marshall in the noted case of *Marbury* vs. *Madison*, (1 Cranch 163,) that the act of Congress for the relief of the relators, directs the performance, by the Postmaster General, of a mere *ministerial* act; that the right of the relators and the obligation of the Postmaster General, are clear and absolute; that the refusal of the latter to perform the act, makes a *case* in law, of which the court has jurisdiction; that the only appropriate remedy is by writ of mandamus; that this writ is, therefore necessary to the exercise of the jurisdiction of the court, and that the court has not only the power, but is bound to issue it.

The whole of this argument rests on the assumption, that if the grant of jurisdiction covers the whole ground of the constitution, it will include the power to issue a writ of mandamus to an *Executive* officer, commanding the performance of an official act, provided the

court shall be of opinion that such act is merely *ministerial* in its nature, an assumption inferred by the court from the above quoted remarks of Judge Johnson. I shall hereafter have occasion to show, that the existence of such jurisdiction, in any of the courts, is incompatible with the distribution of the powers of government made by the constitution, and with the separate and independent authority vested by it in the President. But before entering on that subject, some objections of a minor, but perhaps not less decisive nature, may be mentioned.

1. The above quoted observation of Mr. Justice Johnson, was not necessary to the decision of the case of *McIntyre* vs. *Wood*; and the use now made of it by the circuit court appears to be repugnant to the opinion of the same judge in the case of *McClung* vs. *Silliman*, and to the judgment rendered in the latter case. The existence of this objection is fully admitted by Chief Justice Cranch in the following remarks:

"But, although we have shown, as we think, that even under the opinion of the Supreme Court, in *McIntyre* vs. *Wood*, this court has power to issue a writ of *mandamus* in the present case, yet it may possibly be objected that our argument is founded upon inferences drawn from the language of that opinion, which inferences *Mr. Justice Johnson*, in the case of *McClung* vs. *Selliman*, (6 Wheaton 598,) repudiates. Let us see how the objection is gotten over.

In the first place, it is suggested that "the only point *decided* in the case of *McClung* vs. *Silliman* was, that a State court cannot issue a mandamus to an officer of the United States;" and the remarks of Judge Johnson repudiating the inference referred to, are therefore treated as unnecessary to the decision of the cause. If this were so, it might still be replied, that the *obiter* remarks of the Judge, who delivered the opinion of the court, repudiating inferences drawn from *obiter* remarks of the same judge in a former case, are abundantly sufficient to meet an argument founded on such inferences. But I think it will be seen, on comparing Judge Johnson's statement of the facts with the subsequent parts of his opinion, that the case presented another point, which directly called for the remarks in question.

Mr. Justice Johnson says: "The plaintiff in error, who was also the plaintiff below, supposes himself entitled to a pre-emptive interest in a tract of land, in the State of Ohio, and claims of the Register of the Land Office of the United States the legal acts and documents upon which such rights are initiated. The officer refuses, under the idea that the right is already legally vested in another, and that he possesses, himself, no power over the subject in controversy. A mandamus is then moved for in the circuit court of the United States, and that court decides, that Congress has vested it with no such controlling power over the acts of the ministerial officers in the given case. The same application is then preferred to the State court, for county, in which the subject in controversy is situated. The State court sustains its own jurisdiction over the Register of the Land Office, but, on a view of the merits of the claim, dismisses the motion. *From both these decisions*, appeals are made to this court in form of a writ of error."

He then refers to the decision in *McIntyre* vs. *Wood*: Says the influence of that decision on the *cases* then before the court, is resisted, on the ground that it did not then appear that the controversy was between parties, who, under the *discription of person*, were entitled to sue in the circuit court of the United States; and that, "it is now contended, that as the parties to this controversy are competent to sue under the 11th section, *being citizens of different States*, that this is a case within the provisions of the 14th section, and the circuit court was vested with power to issue this writ, under the description of a writ specially provided for by statute, but "necessary for the exercise of its jurisdiction."

It thus appears that, besides the question concerning the power of the State court, the question whether the circuit court of the United States, for the State of Ohio, could issue a mandamus to a Register of the Land Office, to decide conflicting claims to a certificate of purchase, one claimant being a citizen of Ohio, and the other a citizen of another State, was also submitted for decision. The argument of the plaintiff's counsel in support of such a jurisdiction, like that of the circuit court of this District in the present case, was founded on inferences drawn from the language held by Judge Johnson in the case of *McIntyre* vs. *Wood*. The Judge notices it at length; rejects the inferences on which it rested; and thus disposes of that part of the case which related to the proceeding before the circuit court.

Another answer to the anticipated objection is, that the circuit court of this District "has cognizance *of all cases in law and equity*, however, arising between partes both or either of which are resident or found within the District," a position constantly insisted on in the opinion, and which I propose to examine under the next head.

2. Admitting for the sake of argument, that the construction given to the language of Judge Johnson, in the cases referred to, is the correct one, and that the argument founded on it is sound in principle, still the present case cannot be distinguished from those decided by the Supreme Court, because there is no assential difference between the 5th section of the act of "concerning the District of Columbia," on which the circuit court relies for its claim of jurisdiction over *all cases* in law and equity, *however arising*, and the 15th section of the judiciary act of 1789, which prescribes the jurisdiction of the other courts.

The material words of the 5th section, omitting other classes of cases, are, that the circuit court of this District shall have cognizance "*of all cases in law or equity between both or either of which shall be resident, or shall be found within the said District.*"

Those of the 11th section, omitting value and alternative cases, are that the circuit courts of the United States, shall have cognizance "of all suits *of a civil nature, at common law or in equity, where the dispute is between a citizen of the State where the suit is brought and a citizen of another State.*"

Except that, in the other circuit courts, it is requisite that the one party should be a citizen of the State where the suit is brought, and the other party a citizen of another State; and that in this District it

will be sufficient, if either of the parties be residents or found here, there would seem to be no substantial difference between the two provisions. Indeed, unless the phrase "all *cases* in law and equity," used in the one case, means something different from "all *suits of a civil nature*, at common law, or in equity," used in the other, it is certain that there can be no such difference; and, consequently, that the power and jurisdiction of the circuit court of this District, in regard to the writ of mandamus, so far as depends on the 5th section, above quoted, are precisely the same with those of the other circuit courts.

It may be inferred, from the opinion of the circuit court, that the former of those phrases was supposed to mean something more comprehensive than the other, and so much more so, *as to cover the whole ground of the constitution;* which, it was adjudged, in *McIntyre* vs. *Wood*, that the other phrase did not do. No reason is very distinctly assigned for this distinction; but it appears to rest on the use of the word "*cases*" in that clause of the constitution which provides that the judicial powers of the United States, "shall extend to all *cases* in law and equity, under the constitution and laws of the United States," &c. But, according to the Supreme Court of the United States, and to the opinions of the other expositions of the constitution, the word "*case*," in this section, means nothing more nor less, than the word "*suit.*" Mr. Justice Story, in his commentaries, (vol. III, p. 507,) in answer to the enquiry, what constitutes a *case*, within the meaning of the clause, remarks that, "a case, in the sense of this clause, arises when some subject touching the constitution, laws, or treaties of the United States, is submitted to the courts by a party, who asserts his rights in a form prescribed by law. In other words, a case is a *suit* in law or equity, instituted according to the regular course of judicial proceedings; and, when it involves any question arising under the constitution, laws, or treaties, of the United States, it is within the judicial power confided to the Union," and, for this, he cites the decisions of the Supreme Court and other authorities. On the other hand, the Supreme Court held, in 2 Peters, 464, that the word "*suit*," used in the 25 section of the Judiciary act, applies to any proceeding in a court of justice, by which an individual pursues that remedy in a court of justice, which the law allows him. It seems, therefore, to be settled, that the words are substantially convertible terms; the one referring to the *subject-matter* of judicial proceeding, and the other, to the proceeding on such subject-matter.

The words of the two acts being substantially the same, can there be any difference in their legal effect? And if the words used in the 11th section of the act of 1789, *do not cover the whole ground of the constitution*, and, therefore, *do not authorize* the issuing a mandamus to an Executive officer of the United States, as an original remedy, as has been adjudged by the Supreme Court, how, without overruling the decision of that court, can words of precisely the same import, in the 5th section of the act of 1801, be held *to cover that whole ground*, and to authorize the issuing of such a writ?

It may be admitted that, under the words above quoted from the 5th section, taken in connection with the first section of the same act, which declares that the laws of Virginia and Maryland as they existed at the date of the act, *shall continue and be in force* in the parts of the District ceded by those States respectively, the court may lawfully issue writs of *mandamus*, even as original process, in all cases arising between individuals, both or either of whom are resident, or may be found within the District, in which by the law of Virginia, or of Maryland, as the case may be, such writs could be issued. If this be so, as I incline to think it is, it is because this remedy existed as a part of the adopted local law, which is declared to remain in force, and to which, for the purpose of this remedy, the jurisdiction of the circuit court is attached. But it is impossible to acquire any such jurisdiction in this way over the officers of the United States in their official capacities, because, in those capacities, they were never subject to laws of Virginia or of Maryland, nor did those laws even include, nor could they confer, any jurisdiction over them by mandamus or otherwise.

Officers of the United States cannot sue in their names of office, except when expressly authorized so to do by act of Congress; and the like legislative provision is necessary to render them liable, in their official capacities to the process of the courts. No such provision is found in the act concerning the District of Columbia.

It is also worthy of remark, that, notwithstanding the strong opinion of Chief Justice Marshall in favor of the right of the applicant to a remedy by *mandamus* in any court possessing jurisdiction, no proceeding in the circuit court of this District appears to have been instituted, or to have been thought of by the parties or their counsel, though the court then possessed precisely the same power in this respect, which it possesses now, and though all the parties were residents of the District. This omission, under all the circumstances, proves very clearly, that the jurisdiction now claimed was not then supposed to exist. Instances have no doubt frequently occurred since that period, in which individuals have deemed themselves aggrieved by the action of the Executive officers in cases affecting the rights of such individuals; but this appears to be the first application ever made to the circuit court of the District for a remedy by mandamus. After the most careful examination of the various provisions of the act of 1801, "concerning the District of Columbia," I find nothing in the provisions to authorize the application of such a remedy.

3. In a subsequent part of the opinion, the claim of jurisdiction is defended on another ground. "Our powers," say the court, "are given by the 3d, and our jurisdiction by the 5th section of the act of the 27th February, 1801;" and after quoting the 3d section, (copied above,) the opinion suggests that the only circuit courts, and judges of the circuit court, existing when the act of the 27th February, 1801, was passed, were those ordained and established by the act of Congress of the 13th February, 1801; that the 10th and 11th sections of that act were far more comprehensive than the act of 1789 organ-

izing the former circuit courts, and covered the whole ground of the constitution; and that if they had been in full force, when the case of *McIntyre* vs. *Wood* arose, the decision in that case would probably have been different. And the proposition is advanced that, "although the act of February 13th, 1801, was repealed by the act of 1802, *yet the appeal did not, in any manner, affect the power or jurisdiction of the court given by the act of the 27th February*, 1801."

From the subordinate place assigned to this argument, it does not seem to be much relied on by the court; and, in my judgment, it is wholly untenable. It is true that the act of the 27th February, 1801, was passed fourteen days after the enactment of the law changing the judiciary system and establishing new circuit courts of the United States, and that it gave a more extensive jurisdiction than the 11th section of the act of 1789; but it is scarcely correct to speak of those courts as in existence on the 27th February, 1801. The law creating them was passed on the 13th of February, and the nominations were made and acted on between that day and the 3d of March, 1801; but no one of the courts was organized, and probably no one of the judges actually in office on the 27th February. This, however, is not very important, because the third section of the act of 27th February, 1801, concerning this District, contains no specific reference to the act of 13th February, but merely says, "that the said court and the judges thereof *shall have all the powers vested in the circuit courts and the judges of the circuit courts of the United States.*" The object of this section evidently was to define the *general* powers of the court, and not to enter into the details rendered necessary by the peculiar condition of the District, which was done in the 5th section. Its general powers, and the general power of its judges, were to be the same with those of the circuit courts, and the judges of the circuit courts, of the United States, not as defined in any particular law, but as they should, *from time to time, be vested by law in those courts and judges.* This, it seems to me, is the plain meaning of the clause. Consequently, although so long as the act of 1801 remained in force, its provisions formed the measure of the general powers of the circuit court of this District, yet when it was repealed and the old provision of the act of 1789 substituted in its place, those substituted provisions became thenceforward the measure of its general powers. This is the general rule of interpretation in such cases, because it is not to be presumed, unless the contrary be expressly declared, that the repealed law shall remain in force in respect to any one of several cases standing on the same ground, and thus produce an unnecessary and anomalous distinction. This rule is specially applicable to the present case. The act of the 8th March, 1802, repeats the acts of the 13th February and the 3d of March, 1801, from and after the first of July then next, and contains no exception whatever of the court established in this District. The third section expressly declares, "that all the acts, and parts of acts, which were in force before the passage of the aforesaid two acts, and which by the same were either amended, explained, altered or repealed, shall be, and hereby are, after the said day of

July next, revived and in as full and complete force and operation, as if the said two acts had never been made." Under these circumstances, it seems to me impossible to derive any power from the act of the 13th of February, 1801, and I shall, therefore, omit any reference to the particular provisions of that law.

4. I do this the rather, because, in my judgment, neither the provisions of that law, supposing them to be in force, nor those of any other law that has been, or can be passed, under our present constitution, however broad they may be in their terms, can confer on any court of the United States the power to supervise and control the action of an Executive officer of the United States in any official matter properly appertaining to the Executive Department in which he is employed.

In my former communication, I did not deem it needful to enter into the exposition of this part of the case. The two decisions of the Supreme Court, to which I referred, seemed sufficient for my purpose, and for obvious reasons, connected with the history of the case of *Marbury* vs. *Madison*, I purposely refrained from any allusion to that case. The claim of jurisdiction now made by the circuit court, and the course of reasoning by which it is supported, involving as they do an assertion of power, to direct not only the Postmaster General, but every other Executive officer residing within the District, in the performance of his official duties, when they are supposed to affect the legal rights of an individual, compel me to explain the constitutional grounds on which this part of my opinion is founded.

The proceedings of the convention which formed the Constitution, abundantly prove the earnest desire of its authors to separate the three great departments, the Legislative, Executive, and Judicial, from each other, and to render each independent of the other two. This general object was accomplished, with a few specified exceptions, by the actual provisions of the Constitution. It declares that "the Executive power shall be vested in a President of the United States." In accordance with this fundamental arrangement, it subsequently provides, that the President "shall *take care* that the laws be *faithfully* executed." As a means to the performance of this duty, it gives to the President the exclusive power of appointing, by, and with the consent and advice of the Senate, the principal officers in the Executive departments; it authorizes him to require from them their opinions in writing "upon any subject relating to the duties of their respective offices;" it secures the appointment of inferior Executive officers to the President alone or to the Heads of Departments, as Congress shall, by law, direct; and, according to a construction coeval with the existence of the Government, and settled on the fullest deliberation, it also secures to the President the power of removing at pleasure, either by his own act, or through the agency of the Heads of those Departments, every officer employed therein.

The obvious design of all these provisions, was to make the President responsible for the faithful execution of the laws, and for the official acts of all the officers of the Executive departments. Not that he should be liable to impeachment or other criminal procedure,

or to a civil action, for every illegal act or culpable omission of each one of those officers. Their great number, the distance of many of them from the seat of Government, and the multifarious character of their duties, render it impossible for any one man to give such attention to their conduct as to become responsible for them in that sense; and the law, whether prescribed by a constitution or otherwise, never requires impossibilities: nor that the inferior officer should be exempt from personal responsibility, by impeachment, indictment, or civil action, for any culpable act or omission of duty, even though he may be able to plead in his excuse the express direction of the President. But it is possible for the President, through the Heads of the Executive departments, to give more or less attention to the proceedings of each department, and to take care that the laws concerning it be faithfully executed; and it is agreeable to reason and to the rules of law, that where two persons unite in the performance of an illegal act, or culpable omission of duty, each, to a greater or less extent, and according to the circumstances of the case, should be personally responsible, although one of them may have an official superiority to the others. This species of responsibility it was the design of the Constitution to fasten upon the President, and hence it vests in him, and in him alone, with a few specified exceptions, the whole Executive powers of the Government. It is true, that within a few years, the doctrine has been advanced, that when the Constitution says "the Executive power shall be vested in a President of the United States," it merely intends to give a name to the department, and not to grant any Executive power; and on this ground efforts have been made to prove that the President alone does not possess the power of removal; but it is also true, that this doctrine is directly opposed to the natural import of the language used; to the principles on which the power of removal was established by the first Congress; to the expositions then and since given by the ablest expounders of the Constitution; and to the actual course of the Government, acquiesced in by all its branches, during the whole period of its existence.

The system thus ordained by the Constitution, whatever diversity of opinion may have existed, or may yet exist, as to its expediency, cannot be varied or interfered with by the legislature or the judiciary. It belongs to the legislature to create the Executive Departments, to define their powers and duties, to provide the requisite officers, to prescribe their various functions, and to make all other legal provisions which may be necessary and proper to regulate the action of those departments. But when a law is once passed for the government of the Executive officer, all that appertains to its execution falls under the care of the President. It is his province to instruct and command the officer, to remove him if [he] acts unfaithfully, and to appoint one in his place who will fulfil his duty agreeably to the law. No other department of the Government can exercise this power of removal. The legislature cannot do it themselves, nor can they devolve it on the judiciary, or can those two departments, combined, take it from the President.

It results from the foregoing principles, that the writ of mandamus

cannot be issued, by any court of the United States, to any officer, whether principal or inferior of an Executive department, for the purpose of commanding the execution of any law concerning the appropriate Executive duties of such officer. This conclusion will be strengthened by a little attention to the history and nature of this writ.

From an early period it has been used by the English court of King's Bench as a means of enforcing *its general supervisory jurisdiction* over courts, magistrates, and ministerial officers, inferior to that tribunal. By the statutes of 9 Anne. c. 20 and 11, George 1, c. 4, it was so extended as to afford a remedy for persons entitled to offices or places in corporations, and to compel elections and correct abuses therein of corporate officers; but I find no instance of its being directed to any officer of the Executive departments. In England it issues from the King's Bench alone, because in that court the King originally sat in person, and, by fiction of law, is yet supposed so to do, and because the authority to control the inferior jurisdictions is one of his regal prerogatives. It is, therefore, demonstrated by Blackstone and other writers, "a high *prerogative* writ;" and if the judge or officer to whom it shall be directed in its preremptory form, fails to obey it, he is punishable for his contempt by attachment. During the colonial Government, this branch of the King's prerogative extended to the colonies, and was executed through those colonial courts which were invested with a jurisdiction analagous to that of the King's Bench, and from them the jurisdiction has been derived to the State courts which succeeded them.

Under the 14th section of the judiciary act of 1789, the Supreme Court, in aid of its appellate jurisdiction, may issue this writ in all cases where any act necessary to the exercise of that jurisdiction, shall be omitted to be performed by an inferior tribunal or officer, and the circuit courts of the United States may also issue it in like cases. In these instances the original design of the writ is plainly kept up, the tribunals or officers to which it is issued are subordinate to the appellate court, which, in these respects, exercises over them a supervisory jurisdiction.

The writ then necessarily implies a supervisory power in the court which issues it over the tribunal or officer to which it is directed. In the cases mentioned such a power exists; but under the Constitution of the United States it has not been given to, and cannot exist in, any of our courts, over the Executive departments.

The existence of such a power in the judiciary is repugnant to the whole theory of the Constitution; its effectual exertion, if it were practicable, would defeat the President's power of removal, would take away his responsibility for the faithful execution of the laws, and would transfer to the judiciary, in the particular case, the whole Executive power; for it is palpable that, if the President, under the belief that the faithful execution of the law will be best secured by *not* doing a particular thing which is demanded by a third party, so directs the Executive officer, and the court, on the application of such party, issues a mandamus commanding it to be done, and the

writ is obeyed, it is the court, and not the President, that exercises the Executive power; and the distribution of powers so carefully fixed by the Constitution is unsettled and overturned. But its effectual exertion is not practicable, because the President's power of removal cannot be restrained, and by its exercise he can readily defeat any command which the judiciary may address to the Executive officers. To illustrate this, let us suppose that the circuit court of this District issue a peremptory mandamus to the head of any one of the Departments, commanding him to execute any particular law concerning his official duties in a given way; and that the officer refuses obedience and is attached and committed for the contempt. This is the end of the judicial power in a case of mandamus. But, suppose at this stage of the proceedings, the President interferes by removing the officer and appointing a successor, what becomes of the judicial remedy? The act can only be performed by a person holding the office The individual in the custody of the court no longer holds that office. It has been legally taken from him; and if he were ever so willing to perform the act, he has no longer the ability to do so. The proceeding must then be abandoned, or commenced *de novo* against the new officer, to be frustrated, if the President thinks proper, at the same stage as often as the court shall reach it. If it be said that this is supposing an extreme case, and that the President, from respect to the judiciary, would, probably, suffer the officer to obey the mandamus, rather than so exercise the constitutional power of removal, the answer is, that the very existence of such a power, whether it be used or not, is fatal to the claim of jurisdiction, and that cases may easily be supposed, in which the President, with the strongest desire to avoid a conflict with the judiciary, may yet have no alternative but to use it. In cases which properly refer themselves to the judiciary, it is rarely or never possible to defeat, in this way, the ultimate execution of the judgment of the court. And the fact that, without the *consent* of the Executive department, a peremptory mandamus to an Executive officer must forever remain inoperative, exhibits in the clearest light, the incapacity of any court to issue such a writ.

I am aware that those parts of the opinion of Chief Justice Marshall, in the case of *Marbury* vs. *Madison*, which are quoted at length in the opinion of Judge Cranch, may seem to be repugnant to the conclusion at which I have arrived. In that case (1 Cranch, 137,) applications were made in December, 1801, by Messrs. Marbury and three other persons, to the Supreme Court of the United States for a rule to Mr. Madison, then Secretary of State of the United States, to show cause why a mandamus should not issue commanding him to cause to be delivered to them, respectively, their several commissions as Justices of the Peace in the District of Columbia. The application was founded on the following facts: Mr. Adams, whilst President of the United States, and on the 2d of March, 1801, had nominated the applicants to the Senate for the offices of justices of the peace in the District of Columbia; their nomination were confirmed the next day, and commissions were made out, signed by President Adams, sealed

and left in the Department of State. Mr. Jefferson came into office as President the next day and forbade their delivery, and they were accordingly withheld by Mr. Madison. On the return of the rule to show cause, the counsel for the relators was heard *ex parte*, Mr. Madison not appearing. The case was disposed of, and the application *denied* on the ground that the Supreme Court of the United States had no authority to issue a writ of mandamus, except in the exercise of its *appellate* jurisdiction; and that so much of the 13th section of the Judiciary Act of 1789, as purported to impower that cout to issue writs of mandamus "to persons holding office under the authority of the United States," in original cases, was unconstitutional and void.

The order of discussion adopted by the Chief Justice was as follows:—

"1. Has the applicant a right to the commission he demands?

"2. If he has a right, and that right has been violated, do the laws of his country afford him a remedy?

"3. If they do afford him a remedy, is it a mandamus issuing from this court?"

These questions opened all the points in the case, and they are accordingly considered at large; but it is obvious, that only the remarks under the third head were necessary to the decision of the cause; and that the elaborate reasoning under the first and second heads, including all the passages quoted in the opinion referred to me, was wholly extra-judicial. Every topic embraced under these heads, is, therefore, open to discussion, not only in the Supreme Court, but in the inferior courts. The fact that the case was argued only on one side, must also be allowed to diminish, still more, the weight of these parts of the opinion; and then also it must be borne in mind that general expressions are always to be taken in connection with the particular case in which these expressions are used.

Chief Justice Marshall himself has claimed the benefit of this latter rule in referrence even to that part of the opinion in *Marbury* vs. *Madison*, which explained, under the third head, the very ground on which the cause was decided.

In the case of *Cohens* vs. the *State of Va.* (6 Wheaton, 264,) the counsel for the defendant in error, quoted and relied on some *dicta* of the court in the case of *Marbury* vs. *Madison*. In reply to the argument founded thereon, the Chief Justice remarks:

"It is a maxim not to be disregarded, that general expressions in every opinions, *are to be taken in connection with the case in which those expressions are used.* If they go beyond the case, they may be respected, but ought not to control the judgment in a subsequent suit when the very point is presented for decision. The reason of this maxim is obvious. The question actually before the court is investigated with care, and considered in its full extent. Other principles which may serve to illustrate it are considered in their relation to the case decided, but their possible bearing on all other cases is seldom completely investigated

"In the case of *Marbury* vs. *Madison* the single question before the court, so far as that case case can be applied to this, was, whether the

legislature could give this court original jurisdiction in a case which the constitution had clearly not given it, and in which no doubt respecting the construction of the article could possible be raised. The court decided, and we think, very properly, that the legislature could not give original jurisdiction in such a case. But in the reasoning of the court in support of this dicision, some expressions are used which go far beyond it."

He then explains the particular occason of the *dicta* relied on, and the cases to which they were intended to apply, and proceeds as follows:

"Having such cases only in its view, the court lays down a principle, which is generally correct, *in terms much broader than the decision, and not only much broader than the reasoning with which that decision is supported, but in some instances contradictory to its principle.*" He then states the constuction given to the passages quoted, and the argument founded on it, and observes:

"To this construction the court cannot give assent. The general expressions in the case of *Marbury* vs. *Madison*, must be understood with the limitations which are given to them in this opinion—limitations which in no degree effect the decision in that case or the tenor of its reasoning."

If the general expressions contained in the essential parts of the opinion require to be thus limited, the like caution must be still more necessary, in considering the other parts. On perusing them with care, it will be found that before entering on the discussion of the remedy by *mandamus*, the Chief Justice had decided, that the appointments in question became complete by the signing and sealing of the commission; that the applicant had, therefore, a vested legal right to the office, and to the commission, as the evidence of it, of which the Executive could not deprive him; that the Secretary of State had received the commission from the President for the use of the applicant, and that he had no more right to withhold it than any other person.

This reasoning in support of the remedy by *mandamus* depends entirely on the conclusion previously expressed, that the appointment was complete, and the official power and agency of the President and the Secretary of State, in the matter, at an end; and it was precisely on this point that President Jefferson dissented in such strong terms from the opinion of the Chief Justice. Speaking of this case in a letter to Judge Johnson, (Jefferson's Correspondence, vol. 4, p. 372,) he says, "the commissions were signed and sealed by him (Mr. Adams) but not delivered. I found them on the table of the Department of State on my entrance into office, and I forbade their delivery. Marbury, named in one of them, applied to the Supreme Court for a mandamus to the Secretary of State, (Mr. Madison,) to deliver the commission intended for him. The court determined at once, that being an original process, they had no cognizance of it; and then the question before them was ended. But the Chief Justice went on to lay down what the law would be, had they jurisdiction of the case, to wit: that they should command the delivery. The object was clearly to instruct any other court having the jurisdiction, what they should do if Marbury should

apply to them. Besides the impropriety of this gratuitous interference, could any thing exceed the perversion of law? For if there is any principle of law never yet contradicted, it is, that delivery is one of the essentials to the validity of a deed. Although, signed and sealed, yet, as long as it remains in the hands of the party himself, it is in *fieri* only, it is not a deed, and can be made so only by delivery. In the hands of a third person it may be made an escrow. But, whatever is in the Executive offices is certainly deemed to be in the hands of the President; and in this case, was actually in my hands, because when I countermanded them there was as yet no Secretary of State." The tone and language of this passage may be regretted, but it shows very plainly, when taken in connection with the opinion, the real point on which the controversy turned.

In this view of the case, it is manifest, that the question now presented, viz: whether a mandamus can be issued to the head of an Executive Department, commanding him to perform an Executive act which has not yet been commenced, did not arise. The difference between this question, and the question whether Congress can authorize the judiciary to issue a *mandamus* to an Executive officer, to compel the delivery of a paper in his possession containing the evidence of a *past* Executive act already fully performed, is too obvious to need remark.

The limitations to which the *obiter* arguments in the case of *Marbury* vs. *Madison*, are thus necessarily subject, rescue the present case from their influence, and supersede the necessity of a particular examination of any part of them.

There are, however, one or two remarks on the arguments of the Chief Justice, which as they may tend to elucidate the general subject, and to prevent misapprehension, ought not to be omitted.

He labors to prove that, where a legal vested right has been violated by a public officer, or where a specific duty, on the performance of which individual rights depend, is assigned by law to an officer, and he refuses to perform it, the individual who considers himself aggrieved, has a right to resort to the laws of his country for a remedy, and that the conduct of the officer is liable to be judicially examined. This, if even doubtful, is now too well settled to be disputed. Actions of trespass, and other actions for damages against collectors of the customs, officers of the army and navy, and other public functionaries, for official acts or omissions injurious to the vested rights of individuals, are of frequent occurrence; and it is not to be doubted that, through such actions, any officer of Government, the President included, may be held responsible in damages for the violation of any vested legal right. But these actions are against the officer in his individual character, and do not imply any power in the judicial tribunals in which they may be prosecuted, to supervise and control, in advance, the official action of the officer. Such a power, however, is implied in the jurisdiction by *mandamus*; and its compatibility with the constitution, when issued to an Executive officer for the purpose of compelling him to perform a specific executive duty, is a point not discussed, nor even touched, in the opinion;

probably, because it was supposed that, if the appointment were regarded as *complete* the point could not arise.

This subject was much considered, in the year 1808, by one of my predecessors in office. In that year an application was made by Messrs. Gilchrist and others, to the circuit court of the United States for the District of South Carolina, for a rule on the collector for the port of Charleston, to show cause why a *mandamus* should not issue to him, commanding him to grant clearances for certain ships detained by the collector under instructions from the Secretary of the Treasury given under the embargo acts. The collector appeared, showed cause, by producing the Secretary's instructions, and submitted, without argument, to the decision of the court. The judges being of opinion that the instructions were illegal, ordered a *mandamus* to be issued, commanding the collector to grant clearances, as applied for. President Jefferson, on hearing of these proceedings, referred the subject to the then Attorney General, Mr. Rodney, who expressed a decided opinion against the power of the court to issue the writ. After stating several reasons growing out of the limited jurisdiction of the courts of the United States, and the peculiar provisions of the law under which the instructions of the Secretary of the Treasury had been issued, he concludes as follows:

"It might, perhaps, with propriety, be added, that there does not appear in the constitution of the *United States* any thing which favors an indefinite extension of the jurisdiction of courts over the ministerial officer within the Executive Department. On the contrary, the careful discrimination which is marked between the several departments should dictate great circumspection to each in the exercise of powers having any relation to the other.

"The courts are indubitably the source of legal redress for wrongs committed by ministerial officers, none of whom are above the law. The redress is to be administered by due and legal process in the ordinary way. For there appears to be a material and obvious distinction between a course of proceeding which redresses a wrong, committed by an Executive officer, and an interposition by a mandatory writ, taking the Executive authority out of the hands of the President, and prescribing the course which he and the agents of any department must pursue. In one case, the Executive is left free to act in his proper sphere, but is held to strict responsibility; in the other all responsibility is taken away, and he acts agreeably to judicial mandate. Writs of this kind if made applicable to officers indiscriminately, and acts purely ministerial and Executive in their nature, would necessarily have the effect of transferring the power vested in one department to another department. If in a case like the present, where the law vests a duty and discretion in an Executive officer, a court cannot only administer redress against the misuse of the authority, but previously direct the use to be made of it, it would seem that under the name of a judicial power, an Executive function is necessarily assumed, and that part of the constitution, perhaps, defeated, which makes it the duty of the President to take care that the laws be faithfully executed. I do not see any clear limitation to this

doctrine which would prevent the courts from compelling, by mandamus, all the Executive officers—all subordinate to the President at least, whether charged with legal duties in the Treasury or other departments—to execute the same according to the opinion of the judiciary and contrary to that of the Executive. And it is evident that the confusion arising will be greatly increased by the exercise of such a power by a number of separate courts of legal jurisdiction, whose proceedings would have complete and final effect without an opportunity of control by the Supreme Court. So many branches of the judiciary acting within their respective districts, their courses might be different, and different rules of action might be prescribed for the citizens of different States, instead of that unity of administration which the constitution meant to secure, by placing the Executive power for them all in the same head.

"What, too, becomes of the responsibility of the Executive to the court of impeachment and to the nation? Is he to remain responsible for acts done by command of another department. Or is the nation to lose the security of that responsibility altogether? From these and other considerations, were this branch of the subject to be pursued, it might be inferred that the Constitution of the *United States*, by the distribution of the powers of our Government to different departments, ascribing the Executive duties to one, and the judiciary to another, controls any principle of the *English* law which would authorize either to enter into the department of the other to annul the powers of that other, and to assume the direction of its operations to itself."

This opinion may be found at length in Hall's American Law Journal, (vol. 1, p. 433;) and at page 440, of the same volume, will be found a reply from Judge Johnson, who presided in the circuit court when the mandamus was issued. This paper embraces full review of most of the objections of the Attorney General, but it by no means answers the argument just quoted. The submission of the collector and the District Attorney is relied on as at least excusing the act of the court; and in the case of *McIntyre* vs. *Wood*, (7 Cranch, 504,) it is expressly admitted by Judge Johnson himself, that the court had no jurisdiction in the matter except that derived from the consent of the public officers. This is his language:

"A case occurred some years since in the circuit court of South Carolina, the notoriety of which may apologise for making an observation upon it here. It was a mandamus to a collector to grant a clearance, and unquestionably could not have been issued but upon a supposition inconsistent with the decision in this case. But that mandamus was issued upon the voluntary submission of the collector and the District Attorney, and in order to extricate themselves from an embarrassment resulting from conflicting duties."—"*Volenti non fit injuria.*"

As the Charleston case is the only one prior to the present, in which a writ of mandamus has ever been actually issued by any of the courts of the United States to an Executive officer, its history and result are interesting, and I am happy to find in them so decisive a corroboration of my own opinions.

5. But the ground is taken in the opinion of the circuit court that the relation of the Postmaster General to the President is very different from that of the other heads of Departments. "They" say the court, "in the very terms by which their offices were created, and their duties defined, are to perform such duties and execute such orders as they shall be required to perform and execute, by the President of the United States." "It is true that he is appointed, and therefore, may be removed by the President." But the President, if he has the *power* to control him, can only do it through his fear of removal. If he should so control him, no act done by him under that control could be thereby justified. The Postmaster General, in the exercise of the duties of his office, appears to be legally as independent of the President as the President is of him.

It was with great surprise that I perused this part of the opinion. The constitution assumes that certain Executive Departments will be created, but does not attempt to enumerate them, nor was any enumeration necessary, because the very nature of the functions assigned to any particular department would readily determine its true character. The whole business of the Post Office Department, and all the official duties of the Postmaster General, as its head, are exclusively *Executive;* and if the views of the constitution above taken, be correct, then whatever may be the language of the acts of Congress respecting the Department, there exists a most intimate connection between the Postmaster General and the President; and the latter has the same control over the exercise of his official functions when not prescribed by law, and is subject to the same obligation of taking care that all his duties are faithfully performed which exist in respect to other Heads of Departments.

The passage above quoted is not less repugnant to the practical course of the Government.

One of the first official acts of President Washington, after entering on the Chief Magistracy, was to call on the Postmaster General for an account of the state of his office.

"A perfect knowledge," says his biographer, "of the antecedent state of things being essential to a due administration of the Executive department, its attainment engaged the immediate attention of the President; and he required the temporary heads of Departments to prepare and lay before him such statements and documents as would give this information." (Marshall's Life of Washington, vol. II, p. 150.) The form of this requisition will be found in the late collection of his writings, (vol. X, p. 11,) and it will be seen by the note of the editor, Mr. Sparks, that it was addressed, among others, to Ebenezer Hazard, the Postmaster General appointed by the old Congress.

The first law concerning the Post Office Department, passed after the adoption of the constitution, was the act "for the temporary establishment of the post office," approved September 22, 1789. It consisted only of two sections, the last merely declaring that the law should continue in force until the end of the next session of Congress, and no longer. The first section was in the following words:

"*Be it enacted, &c.*, That there shall be appointed a Postmaster

General; his powers and salary, and the compensation to the assistant or clerk and deputies which he may appoint, and the regulations of the post office, shall be the same as they last were, under the resolutions and ordinances of the late Congress; *the Postmaster General to be subject to the direction of the President* of the United States in performing the duties of his office, and in forming contracts for the transportation of the mail." This act was continued in force by the acts of August 4th, 1790, March 3d, 1791, and February 20th, 1792, to the 1st June, 1792, when it gave place to the act of 20th February, 1792, to establish the post office and post roads within the United States, which fully organized the Department, and introduced numerous legal provisions for the government of its concerns.

Since 1792 the duties of the Postmaster General have been so far defined by law as to leave little room for Executive direction; and it was not until 1829 that he was regarded as a member of the President's cabinet; but that his office has always been treated by Congress as well as by the President, as an Executive department, is shown by the acts of 1789, which left all its concerns to the direction of the President. By the act of 1792, and all the subsequent laws which speak of it as a "Department," by the power of appointing postmasters, vested by law from 1789 to 1836, in the Postmaster General alone, and still retained by him in all cases, when the commissions of the postmaster are under $1,000—an arrangement palpably unconstitutional unless the Postmaster General be the head of a department—by the practice of all those who have held the office of President, to require reports from, and to give directions to, the Postmaster General; by the placing of the Department on the same footing, in respect to salary and organization, with the other great Executive departments; and finally, by the introduction of its head into the cabinet council of the President.

The relation, then, of the Postmaster General to the President, is the same as that of the other Heads of the Departments. This relation does not authorize the President to give any direction to the Postmaster General, contrary to the laws concerning the Department; but it authorizes and requires him to direct the faithful execution of those laws, and to take care that such directions be followed; and, as the only coercive power with which the President is armed by the constitution, is the power of removal, it will be his duty to exercise that power if he cannot otherwise secure, on the part of the Postmaster General, a faithful execution of the laws. Nor will acts done by the Postmaster General, under the President's direction, be invalid, even though the judgment of the former be opposed to the act, and he be induced, through fear of removal, to execute the President's direction. The defectiveness of the motive will not determine the legal character of the act. If it be within the power of the Department, and be conformable to law, it will still be valid.

I think, therefore, that this officer is no more subject in his official action to the supervision and control of the judiciary, than the head of any other Executive department, and that the principles above stated, if sound in respect to any Executive officer, must be admitted when

the subject is fully examined, to be equally applicable to him. On the other hand, the claim of judicial power set up in the present case in respect to the Postmaster General, involves the like claim over the official action of every other Executive department, and therefore brings into discussion one of the most grave and important questions which has yet arisen in the practical administration of the Government.

I am, sir,

And now, to wit, this thirteenth day of July, in the year aforesaid, came into the circuit court here the parties aforesaid, by their attornies aforesaid; and the court, after having heard council on both sides, and fully understanding the whole matter, and after mature deliberation thereon, made the following order, to wit:

Order for peremptory mandamus.

Whereas, heretofore, at a term of the circuit court of the District of Columbia for the county of Washington, to wit, on the 7th day of June, 1837, the said circuit court, upon certain grounds then appearing to them, did order and direct that a writ of mandamus should issue, directed to Amos Kendall, Postmaster General of the United States, commanding and enjoining him that forthwith and without delay, immediately upon the receipt of said writ, he credit certain mail contractors therein named with the full amount of money as therein mentioned, awarded and decided to be due to the said mail contractors by the Solicitor of the Treasury, under the power and authority conferred on him by the act of Congress therein mentioned, according to the true intent and meaning of said award and decision, or that he, the said Postmaster General as aforesaid, show cause to the contrary on or before ten o'clock A. M., on Saturday, the 10th June instant, 1837.

And whereas the Marshal of the said district hath made return to the said court, that the said writ of mandamus was duly served on the said Amos Kendall, Postmaster General as aforesaid, on the 7th day of June last; and whereas the said Amos Kendall, Postmaster General as aforesaid, on the 24th day of June, 1837, to which day, time was given to him to make return to said writ, did certify and return reasons why the said circuit court should not award their writ of mandamus in this behalf; and whereas, afterwards, to wit, at the same session of said circuit court, upon consideration of the said return, and of the reasons therein contained against the rewarding and issuing of the said writ of mandamus, and upon consideration of the arguments of counsel, as well on behalf of the said Amos as of the said relators, it was considered and adjudged by the court that the said return was insufficient, and should be quashed. Therefore, on motion on behalf of William B. Stokes, Richard C. Stockton, Lucius W. Stockton, and Daniel Moore, the relators aforesaid, it is, this thirteenth day of July, 1837, by the said circuit court, on due consideration of the premises, ordered and directed that a peremptory writ of mandamus do issue, to be directed to the said Amos Kendall, Postmaster General of the